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2011 NFL LD-Due Process Rights to Non-Citizens Accused of Terrorism

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Many of the terms in this resolution can be contextually defined and as such do not need an explicit definition. The term “non-citizens accused of terrorism,” for example, is fairly self-explanatory and it is unlikely that, after listening to a case, a judge would need the distinction between the former and “citizens” explained to them. The phrase “constitutional due process protections” almost requires a contextual definition: as explained above, “due process protections” could refer to virtually any part of the law. Each team would do well to explain briefly in their definition of “due process” which aspects of the law they are referring to—I suggest focusing on the right to a fair, speedy trial in front of a jury and the rights concerning cruel and unusual punishment. Following are three terms that can and should be defined, followed by a discussion of their usage in round.....	16
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Resolved: The United States ought to extend to non-citizens accused of terrorism the same constitutional due process protections it grants to citizens

PART I: TOPIC OVERVIEW

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Introduction

One of the most contentious foreign policy issues currently being discussed in all branches of government is whether or not the United States Federal Government has an obligation to grant non-citizen suspected terrorists with the same rights it grants to citizens. This discussion has been brought to the forefront of public attention a number of times, notably stemming from the media attention paid to Guantanamo Bay and Abu Grahb detention centers. There are many opinions on this issue and it is in the spirit of expanded discussion that the debate community chooses to pose this question to competitors. This brief is intended to serve as a launching point for additional research and case writing. The first part of this brief will be an essay discussing the topic as a whole, divided into three sections. The first section of this essay will primarily be concerned with background information about the topic and will include information about constitutional due process protections in the US, the differences in treatment between non-citizens and citizens, the reasons for non-citizens being treated differently than citizens, and different ways of classifying non-citizens; in addition to common arguments both for and against the current US policy of not extending due process protections to non-citizens accused of terrorism. The second and third sections of the essay will be a discussion of some affirmative and negative strategy ideas. The second part of this brief is a bibliography to provide sources for additional research. The third part will serve as an abstract of the first section—essentially, a condensed version of the background information and strategies. The fourth part will define the key terms of the resolution. The fifth and sixth parts will consist of sample affirmative and negative cases, along with evidence cards.

SECTION 1-CONCEPTUAL OVERVIEW

Before we can go about interrogating whether non-citizens accused of terrorism should have due process protections, it is vital to understand what those protections are. In the United States Constitution, it is written that no individual will “be deprived of life, liberty, or property, without due process of law” by either the Federal Government (Fifth Amendment) or and State Government (Fourteenth Amendment). Further clarification of what is meant by “due process” is not forthcoming from the founding fathers, at least not in the Constitution itself. Some scholars postulate that the term “due process” and the term “law of the land” were used interchangeably in eighteenth century America. Regardless, due process protections essentially require the government to respect all legal rights of an individual with those protections. If the government were to harm an individual without following the specific path set out for them in the law, they would violate due process. It is important to note that “constitutional due process protections” as worded in the resolution is virtually limitless. All parts of the Constitution are part of the laws of the United States and thus all can be referred to as due process protections. Some provisions of the Constitution apply only to individuals already located in the United States, such as the Third Amendment forbidding the quartering of soldiers in houses without consent of the owner. Others, however, could apply to both citizens and non-citizens alike, such as the Eight Amendment, which reads “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

For the purposes of this resolution, it is likely wise to focus on a few due process protections instead of attempting to apply the whole of the Constitution to a debate round. Almost all, if not all, of the literature surrounding detained non-citizens accused of terrorism that also discusses due process of law refers to the laws surrounding detention and trial of individuals accused of crimes. As such, the Constitutional due process protections that are most relevant are the Sixth Amendment which reads “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”, and the Eight Amendment (cruel and unusual punishment).

An alternative reading of the resolution may lead one to be less Constitutionally focused and instead to argue that “constitutional due process protections” refers generally to the rights of accused individuals to be treated well and

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given a fair trial. The previous Constitutional model is likely more specific in this instance and therefore preferable, but if you encounter this scenario or wish to debate this way, it is easy to mold the Constitutional interpretation to fit this more general one. Cruel and unusual punishment can be argued to include torture, prolonged detention without trial or a reason given for detention, and most other potentially injurious facets of the detention system. The Sixth Amendment protections could be stated in different terms as well, by saying, for example, that due process protections include the right to a trial by jury. Regardless of the wording, due process protections should include first and foremost the right to a trial by jury, as one of the major differences between non-citizens accused of terrorism and citizens is that the former do not, according to current US policy, have a right to a trial in a federal court and instead can be tried in front of a military tribunal.

It is likely that the other major point of focus in most debates will be over the legality of detention practices. One of the major criticisms of the government's treatment of detained non-citizens is that they are sometimes detained without a specific reason, and instead only told that they are suspected of terrorism, or of being an enemy of the state. These practices were authorized by the Authorization to Use Military Force (AUMF), which came into effect in 2001 and grants the President all authority to use all "necessary and appropriate force" against those he determined were involved in any way with 9/11. In response to massive criticism over inhumane interrogation/detention practices, the US government signed two pieces of legislation into law in an attempt to improve its image and the treatment of detainees. In 2005, it signed the Detainee Treatment Act (DTA) which prohibits the inhumane treatment of prisoners held in federal detention centers and requires all military interrogations to follow the US Army Field Manual for Human Intelligence Collector Operations (which ensures they are nonviolent and at least somewhat non-coercive). The DTA also included a provision that removed federal court jurisdiction in habeas corpus cases brought by non-citizen detainees. Habeas corpus is essentially a legal avenue through which an individual can be released from unlawful detention. When a prisoner files a writ of habeas corpus, a court is obligated to hear the prisoner's case and determine if they are being held legally or without sufficient reason. In 2006, in response to the Supreme Court's decision in *Hamdan v. Rumsfeld* in which it was ruled that military commissions violated the Geneva Convention on the treatment of enemy combatants as well as the Uniform Code of Military Justice, the government passed the Military Commissions Act (MCA). The MCA established a legal framework for bringing detainees to trial in front of military tribunals, stating its purpose as: "To authorize trial by military commission for violations of the law of war, and for other purposes." It also attempted to limit habeas corpus rights of detainees. In response to the DTA and the MCA, the Supreme Court decided in *Boumediene v. Bush* that all prisoners had the right to habeas corpus and the MCA unconstitutionally suspended that right. The current law is the MCA of 2009, updated to include habeas corpus rights for prisoners and to change slightly the functionality of military tribunals. This information can be used in a number of ways by both the affirmative and negative team. For example, the affirmative could use the Supreme Court decisions to argue that constitutional due process protections are continually growing despite the legislative branch's attempts to block those protections. This would be an easy way to argue that the US ought to extend due process protections to non-citizens: one of the three major branches, the one that controls what is and is not constitutional, seems to favor additional protections. On the other hand, the negative team could argue that keeping two branches of the government in flux with each other is vital for a functioning democracy and as the debate goes back and forth, due process protections may continue to grow in ways that they wouldn't if the legislative branch was to immediately kowtow to the opinions of the Court. The negative can also argue that, as the federal government can't come to an agreement on how exactly prisoners should be treated, that it is impossible to determine if the US "ought" to extend due process protections. Two of the most important bodies in the land can't agree on what is right, so how can debaters definitively say one way or the other? We will discuss this strategy a bit more in part three of this essay.

Many of the differences in treatment between citizens and non-citizens are discussed above. Citizens have the right to a trial in front of a jury of their peers, have never had the right to habeas corpus jeopardized, and generally live better lives while in custody. It does not take many minutes of research online to come across horror stories of detention centers told by non-citizens accused of terrorism. The Guantanamo Bay detention center has been specifically singled out by the media as a center for torture, sexual abuse, violent interrogation practices, forced drugging and religious persecution. There have been hundreds of suicide attempts at Guantanamo Bay as well, suggesting a very low quality of life. A potential avenue for affirmative cases could be to discuss some of these poor detention practices and argue that the sanctity of human life—especially potentially innocent human life—should

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outweigh virtually anything else. It is critical to note that the resolution is concerned not with convicted terrorists but instead with those ACCUSED of terrorism. In the American justice system, these people should technically be innocent until proven guilty. Aside from differences in detainment procedures, the biggest difference in treatment between citizens and non-citizens is the usage of military tribunals. Once one has been labeled an enemy combatant, the AUMF, DTA and MCA allow that individual to be tried in front of a panel of military officers with no recourse in the federal court system. The major difference between conventional courts and military tribunals is essentially that it is far easier to convict someone in a military tribunal. Cases are heard not by a jury but by a panel of 3-7 military officers. To convict someone they need only reach 2/3rds consensus, not a unanimous verdict like normal courts require. The accused are not allowed to choose their own lawyer and are instead represented by a military lawyer. Additionally, the accused is not allowed to view all evidence against them. The officers of the court are allowed to consider evidence that is never heard by the accused, so they have no ability to refute it. Evidence standards are also more lax, as hearsay of guards or officers is accepted. Due to the classification of those suspected of terrorism as “unlawful combatants,” even an acquittal of all charges may not lead to a release from detention.

As you will find when conducting research for the negative side of this debate, the primary reason cited for detaining non-citizens indefinitely is “national security.” A term often used is “preventive detention,” which describes the aim of pre-crime detention: essentially, to ensure that those held in custody cannot carry out any criminal plans. The common argument is that those accused of terrorism must sit in detention in order to ensure that they don’t carry out terrorist attacks. The reality is that many supposed terrorists are actually innocent, and spend many years locked up without a charge ever being brought against them before their release, despite the existence of the Office for the Administrative Review of the Detention of Enemy Combatants which conducts annual reviews of detainees. Proponents of this system point to the unscrupulousness of terrorists and argue that if we don’t detain suspects, the risk of terrorism is greatly increased. Opponents argue that preventive detention doesn’t work as there are simply too many terrorists and detaining a handful does nothing but create more terrorists. It is important to make a distinction between non-citizens accused of terrorism and other non-citizens. Those accused of terrorism are the only ones that are held in custody for so long without charges or legal recourse —those labeled “unlawful enemy combatants.”

The US government recognizes a variety of subcategories of non-citizens. First, there are civilian non-citizens and military/combatant non-citizens. The first category we need not concern ourselves with as they are, by definition, outside the resolution. Within the second category, there are three subcategories: lawful combatants, noncombatants and unlawful combatants. The first grouping refers to members of the military of an established state that have governmental authorization to engage in hostilities. To fit into this category, an individual must have a uniform, a commanding officer, or some other type of identification. The second grouping refers to individuals who are involved somehow with lawful combatants but do not actually engage in hostilities—like civilian reporters travelling with armed forces or medical chaplains. The definition extends to POWs or military personnel who are not currently in combat. The final category, unlawful combatants, is the one we are most interested in. Unlawful combatants directly participate in hostilities without any guiding governmental or international authority behind their actions (such as terrorists). Under the international Law of Armed Combat (LOAC), unlawful combatants may be captured, held and tried for war crimes. It is these unlawful combatants that the US government is detaining, as, in the war on terror, every unlawful combatant gets accused of terrorism and becomes a non-citizen accused of terrorism.

Hopefully the above information forms a sufficient backdrop to understand the issues at play in this topic. If you are confused about some issues, don’t worry: the laws governing combat and detention are pretty complicated and confusing. As you continue to research, you will gain a better understanding of the nuances of this issue and likely discover interesting directions to take your cases in. In the next section, we will discuss some possible affirmative strategies.

SECTION 2-AFFIRMATIVE STRATEGIES

The affirmative side of this debate is, in my opinion, much easier to argue than the negative side. Not only is there a preponderance of evidence as to the harms of preventive detainment as specifically related to Abu Grahb and

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Guantanamo Bay detention centers, but as the affirmative, you get to frame the debate in whatever way you wish. On a topic as volatile as this, the ability to couch the debate in the terms you wish is a great boon. First, the affirmative needs to decide whether it wishes to argue from a practical standpoint or a moral one. This will determine the structure of the rest of the case. While it is technically possible to argue from both standpoints, choosing one or the other forces the negative into your framework and will likely force adaptation. If you can cut off your opponents options before they even have a chance to read their case, your chances of winning improve dramatically.

The moral standpoint may be the more predictable of the two ways to construct a case, but that does not minimize its effectiveness. The moral argument should have a value along the lines of equality or justice, and should claim that due process of law is the only way to ensure that all people are treated equally. The criterion could be individual rights, but really anything that attempts to minimize poor treatment of humans will do. The bulk of the morality case should be focused on the atrocities committed in detention centers and the lack of charges against suspected terrorists. It should stress that the resolution is concerned with non-citizens ACCUSED of terrorism, not CONVICTED of terrorism. Point out that the American justice system prides itself on being a moral, scrupulous body that is governed by the cardinal rule of innocent until proven guilty. Why isn't that being applied here? What makes these non-citizens any less human than citizens? Why does the government have the right to take away someone's rights without proof, on a whim? In the war on terror, anyone can be a terrorist. The only requirement to put someone in custody and strip them of due process rights is that they aren't a citizen of the United States and that the government says they might be a terrorist. Without legal recourse or due process, there is simply no way to be sure we are not detaining innocent people. Instead, we allow the government to run rampant over critical human rights that should apply to all, not only to those lucky enough to have been born in America. The Constitution says "all men" are created equal, not just the ones in the US. Shouldn't everyone have due process rights? The Constitution is supposed to describe limits on the federal government's power, not on the power of the people.

Simply pointing out the double standard held by the US government and the atrocities committed in its name is not enough, however. Your case has to have real impacts, especially because the negative will likely be arguing that detention stops terrorist attacks from killing hundreds of thousands of people. The easy way to generate impacts to your case is to argue that holding people in custody without a charge for long stretches of time is inherently dehumanizing, and considering the poor conditions in detention centers, you should be able to win a dehumanization argument easily. Spend some time reading stories of the inside of Guantanamo Bay or Abu Grahیب and you will come away with some excellent material to illustrate to judges exactly how messed up this aspect of US foreign policy is. Also, point out that, before due process is followed, there is no guarantee that the "terrorists" are actually terrorists. Many people have been released after years of poor treatment at Guantanamo, found to be innocent. How can we trust a system that is so flawed?

By making the debate a moral issue, the affirmative makes it very difficult for the negative to gain ground, as it is nearly impossible to argue that torture and prolonged detainment are morally beneficial. Negative teams will be forced into a value/criterion debate if they wish to get access to their case, or their contentions will be relatively weak. That said, the moral standpoint is predictable considering the media focus on Guantanamo Bay and the poor treatment of prisoners. You run the risk of a negative team having answers to all of your blocks. The practical viewpoint is a little sneakier.

If you are constructing a practical debate case, you should be focused more on the wide-reaching consequences of this aspect of US foreign policy. Arguments that preventive detention doesn't solve anything are good, as are arguments that giving due process rights to non-citizens wouldn't harm anyone in the long run. You can expect the negative to have arguments about national security being paramount, likely arguing from a utilitarian framework by saying a few innocent people staying in prison is better than another terrorist attack. Why not coopt their framework? Use utilitarianism as a value and, for example, minimization of casualties as a criterion. This allows you to argue that the current system actually increases terrorism. There is a lot of evidence and testimony from members of the military that point towards preventive detention centers being one of the primary causes of increased terrorist recruitment, specifically Guantanamo and Abu Grahیب. Additionally, the US's poor human rights credibility over the issues of torture discourage local civilians in Iraq and Afghanistan to cooperate in the capturing of terrorists. Possibly more damaging, this poor credibility harms the international effort on the war on terror as

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political leaders come under fire from their citizens for allying with a war effort that encourages torture. It should also be argued that the current system doesn't deter terrorists at all, or that deterrence fails in general as a policy. The practical standpoint should also make arguments that the conventional system of justice in America would work. The negative will be trying to argue that giving due process rights to terrorists would lead to a collapse of the American justice system (or something). You should head them off and argue that the system would run smoothly enough and ensure we didn't keep innocent people in custody. Argue that while conventional prisons are more humane than detention centers, they still keep people behind bars and unable to commit terrorist attacks if they were so inclined. Also argue that the conventional justice system has been very functional in the US since its inception while military tribunals are largely untested.

The practical standpoint probably gives a bit more ground to the negative, but it does so in a roundabout way that will likely confuse your opponents. They will have to slog through the entire affirmative case if they wish to gain access to their arguments about national security being better served by detention centers, and the argument that terrorism INCREASES as a result of detention centers should prove devastating. Outside of these two major standpoints, there are other arguments you can make. For example, you could argue that, if the government can strip the rights of non-citizens, they might also decide to strip the rights of citizens if they thought they were accused of terrorism—a slippery slope argument. Joe Lieberman has argued that a citizen sacrifices his rights of citizenship if they try to attack the United States, so there is some ground for this argument. The affirmative has many options, so choose what intrigues you about this issue the most and you will likely be able to build a case around it.

SECTION 3-NEGATIVE STRATEGIES

The negative on this topic has an uphill battle to fight. Not only does the affirmative have the ability to couch to debate in whatever terms it chooses, but there aren't as many viable negative strategies as negative ones. Debating the negative in front of liberal judges will be particularly difficult as they will be less likely to buy arguments about national security and will come into the round with a bias towards civil liberties and the like. That said, the negative has the benefit of being very adaptable to the affirmative. This issue has been discussed for long enough that there is sufficient evidence on both sides of the aisle. One of the most important considerations on the negative is to not allow the affirmative to slam you into defending morally reprehensible policies. If the affirmative tries to say that the only thing that matters is morality or individual rights, the negative should be ready to argue that that conception of the debate is far too limiting—it would force the negative to say that torture/indefinite detention are good. Instead, the negative is best served by approaching the debate from a utilitarian standpoint. That way, you can outweigh all of the sob stories of the affirmative by arguing that you solve better for the greater good.

There are a couple of ways you can structure your case. One way would be to argue that constitutional due process rights have already been extended. The Supreme Court ruled in *Hamdi vs. Rumsfeld* that the president can detain non-citizens without charge and without following normal rules that apply to citizens. As the dichotomy between citizens and non-citizens has already been drawn by the Supreme Court, who interprets the Constitution, it is an easy argument to make that non-citizens are still being treated constitutionally—just not in the same way as citizens. Using the Supreme Court can give your arguments the weight of authority as they are the highest authority on constitutional issues. You could also argue that granting due process rights to prisoners wouldn't actually solve any individual rights/morality issues as the President would still retain the power to detain people whenever he wanted just by saying they are suspected terrorists. Even if due process is followed, wrongful detention could still occur.

Personally, however, I think the strongest arguments on the negative are those that show that extending due process protections to non-citizens would be catastrophic. If all due process protections afforded to citizens are applied to non-citizens as well, then these non-citizen terrorist suspects are immediately put on the same track as conventional citizen criminals. That means the government needs to bring a charge against them or set them free. It also means they get tried in civilian courts instead of military commissions. This poses several problems. First, many non-citizens suspected of terrorism haven't actually committed a crime but were in the planning stages of a terrorist operation. These individuals would have to be set free. There are also security concerns. Terrorist trials would undoubtedly draw the attention of terrorist elements operating in the United States and all concerned

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individuals would have to be guarded at all times. Public trials would also draw large public crowds and anti-terrorist elements who might attempt to attack the suspected terrorists. More importantly, military commissions have different evidence standards than civilian courts as they are able to accept hearsay evidence. A terrorist could easily breeze through a civilian court while a military tribunal is much more likely to convict a guilty individual. A third concern is secrecy. When tracking terrorist elements, it is key that those elements are unaware of how much the US knows, otherwise they might be able to relocate or restructure themselves to avoid capture. In the conventional court system, there is no secrecy. All evidence must be disclosed and made available to the public. In 1995, for example, in the trial for Sheik Omar Abdel Rahman and other terrorists, the government was forced to disclose the identity of all other known co-conspirators, which included many individuals, including Osama bin Laden, that were not already captured. Bin Laden and other terrorist leaders gained vital information: they knew which of their members were compromised or under scrutiny from the government. Obviously, these problems make it difficult for the affirmative to argue that the conventional system would be able to solve for the terrorist suspects currently held in detention centers.

Taking the argument one step further, it could be argued that conventional prison systems breed terrorists directly related to the number of terrorists in prison. If a terrorist suspect is given full due process rights, then they will be held in a conventional prison after a conventional trial (if they are convicted, already less likely as a result of evidence standards and the open nature of the civilian court system). There is research that points towards prisons being a hotbed for radicalization through the teachings of radical Islam. Critical to the spread of terrorism in prisons is the presence of a group of radicalized prisoners who preach their message to other prisoners. Given the number of prisoners in the country, it becomes almost inevitable that some prisoners will be converted to radical Islam, develop an already festering hatred of the United States, then finish their term in prison and go on to commit terrorist acts. Just because terrorists are successfully put in prison does not mean they are safe.

The final step of this strategy is to make it clear that you are not arguing against due process in general, just not right now, as the conventional system cannot bear the burden of terrorist trials or containment. Instead, argue that the law needs to be changed FIRST, and a new method of dealing with the current problem needs to be adopted by the legislature, before due process can be applied. That way, you coopt most of the affirmative's arguments about individual rights and morality etc. but can argue that practical considerations warrant caution. The argument that individuals have been suffering already for 8 years is devastating—there is no time frame on the affirmative's impacts in this scenario. Argue that the law will be changed eventually, perhaps make a few suggestions based on your own research as to what should be done, and THEN say that the US could extend due process protections. In the current climate, though, the results would be disastrous.

Ultimately, the negative would be well served by not reading the same case every round and instead being sure to pay attention to which direction the affirmative is going. Sometimes, it might be better to read your contentions as answers to the affirmative (e.g. aff argues conventional system will solve). In any event, there is a fair amount of literature on this side of the debate as well, so you shouldn't stop at this brief. Research the issue a bit more and you should be able to come up with a strategy that works best for what you are interested in.

PART II: BIBLIOGRAPHY

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<http://www.washingtonpost.com/wp-dyn/content/article/2008/11/28/AR2008112802242.html>

In this op-ed, written under a pseudonym, a former member of the war effort in Iraq discusses his experiences as a lead interrogator tasked with hunting down Abu Musab al-Zarqawi, the leader of al-Qaeda in Iraq. Alexander refused to interrogate prisoners in the normal cruel way and instead developed a more humane approach that he passed on to the men under his command. It becomes clear that cruel methods of interrogation lead only to more terrorist recruitment and resistance, while Alexander's more human-oriented methods were quite effective.

Allsop, Davis, University of St. Andrews, "The Viability of Deterring Terrorism." *e-IR.com*, April 2010
<http://www.e-ir.info/?p=4330>

This essay draws from a variety of sources to argue that it is possible to deter terrorists only if one is to focus on the psyche of a terrorist and target only things that a terrorist would not like to lose. Allsop goes through a number of case studies including the recent War on Terror to point out that current deterrence methods are inadequate.

Coffey, Kendall, former U.S. attorney and current Miami lawyer, "The Case For Military Tribunals." *Wall Street Journal*, May 26th, 2003. http://kendallcoffey.com/pdfs/publications/Case_for_Military_Tribunals.pdf

Using the case study of the trials of Zaccarias Moussaoui, an alleged September 11th conspirator, and Ramzi Binalshibh, a self-proclaimed coordinator of September 11th, Coffey argues that the civilian court system is inadequately equipped to deal with the rigors of terrorist trials.

Fisher, Uri, PhD candidate in Political Science at the University of Colorado-Boulder. "Deterrence, Terrorism, and American Values." *Homeland Security Affairs* III, no. 1, February 2007.
<http://www.hsaj.org/?article=3.1.4>

Fisher's article discusses practical reasons United States counterterrorism deterrence efforts are difficult.

The article recognizes that many analysts view deterrence as a viable foreign policy for a variety of reasons, then argues that those analysts miss a critical piece of the equation: the United States' moral and political leanings. For deterrence to be effective, terrorists must believe that the US would be willing to pursue heavy-handed policy options such as nuclear retaliation or targeted killing of loved ones. Fisher argues that these policy options are not viable in light of the US' moral compass and desire to act as a global policeman.

Fletcher, Laurel E., Director of the International Human Rights Law Clinic, UC Berkeley School of Law "Guantanamo and its Aftermath." *Human Rights Center and International Human Rights Law Clinic*, UC Berkeley, November 2008.
http://www.law.berkeley.edu/HRCweb/pdfs/Gtmo-Aftermath_2.pdf

In this powerful article, Fletcher offers a retrospective look at the detention practices at Guantanamo Bay, including how they came to be, what they were, and what the impact has been on the prisoners of Guantanamo.

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Frey, Bruno S., Professor of Economics at the Institute for Empirical Economic Research, University of Zurich and Luechinger, Simon, research assistant, "How to Fight Terrorism: Alternatives to Deterrence." *Institute for Empirical Research in Economics*, University of Zurich, November 2002.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=359824

Frey and Luechinger offer an economically driven analysis of terrorist deterrence strategies. They claim that deterrence strategies are a negative sum game for terrorists—they can only lose in the traditional deterrence model. Instead, Frey suggests alternative policies that give benefits to terrorists if they renounce terrorism—a positive sum game.

Frey, Bruno S., Professor of Economics at the Institute for Empirical Economic Research, University of Zurich and Luechinger, Simon, research assistant, "Terrorism: Deterrence May Backfire." *Institute for Empirical Research in Economics*, University of Zurich, December 2002. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=359823

Frey and Luechinger continue their line of analysis presented in the previous article from a slightly different viewpoint, but keeping with the economic model. They argue that a good anti-terrorist policy focuses on reducing suspected benefits of terrorists instead of increasing the suspected punishment. It is explained that deterrence policy actually benefits terrorists.

Garcia, Michael John et. al, Legislative Attorney, former Assistant Secretary for Immigration and Customs Enforcement. "Closing the Guantanamo Detention Center: Legal Issues." *Congressional Research Service* March 28th, 2011 <http://www.fas.org/sgp/crs/natsec/R40139.pdf>

Garcia and his team of legislative attorneys have put together a remarkably thorough brief that discusses many possible routes for the closure of Guantanamo Bay. They cover detainee transfer or release and destination (the US or elsewhere) and the detainees' rights in criminal prosecutions in great detail before concluding that there are some major legal concerns that need to be addressed before closing Guantanamo will go smoothly.

Hamm, Mark S, PhD in Criminology and Criminal Justice at Indiana State University "Terrorist Recruitment in American Correctional Institutions: An Exploratory Study of Non-Traditional Faith Groups Final Report." US Department of Justice, December 2007.
<http://www.ncjrs.gov/pdffiles1/nij/grants/220957.pdf>

This report, commissioned by the Department of Justice but never published, details the relationship between prison and conversion to non-traditional religions and extremist violence. It covers a wide swathe of information ranging from the history of terrorist recruitment in prisons to different kinds of religious converts in prison. Hamm ultimately concludes that terrorist recruitment does occur in prison, usually by one radical inmate radicalizing others. Charismatic leaders allow for increased recruitment and radicalization. After leaving prison, some radical converts pose a risk to national security.

Kukis, Mark, Time Journalist. "How to Close Guantanamo: A Legal Minefield." *Time Magazine* November 11th, 2008
<http://www.time.com/time/nation/article/0,8599,1858205,00.html>

In this article, Kukis discusses the legal difficulties surrounding the closure of Guantanamo Bay. He raises questions of what is to be done with Guantanamo detainees: where they'll be tried, where they'll be held, and where they'll end up. He points out that there is an argument over whether the civilian court system or military commissions are better able to try terrorist suspects.

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Masters, Johnathan, Masters in Social Theory from New School University, "Closing Guantanamo?" *Council on Foreign Relations*, July 11th, 2011. <http://www.cfr.org/terrorism-and-the-law/closing-guantanamo/p18525>

Masters gives a good overview of the events leading up to the current situation of terrorist detention in the US. He discusses the different kinds of inmates, the creation of military commissions, the conflict between military commissions and federal courts, the executive branch's actions, and the controversy surrounding the whole issue.

Mora, Alberto J., Former U.S. Navy General Counsel. "Statement of Alberto J. Mora." Senate Committee on Armed Services Hearing on the Treatment of Detainees in U.S. Custody, June 17th 2008. <http://armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf>

In this oral statement, Mora argues that the US's decision to use "harsh" interrogation techniques during the war on terror was a massive mistake. He says poor treatment of detainees not only violates the US's moral code and founding principles but also damages foreign policy interests and national security, pointing to decreasing international credibility and cooperation on the war on terror in addition to reports of US soldiers claiming that detention practices are directly responsible for terrorist recruitment.

Morris, Madeline, **Professor of Law at Duke University, "After Guantanamo: War, Crime, and Detention." *Harvard Law and Policy Review*. June 30th, 2009.** http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2630&context=faculty_scholarship&sei

This article begins with a brief discussion of the shortfalls of the current detention system as well as an explanation of why civilian courts are a poor venue to try terrorists. Morris et. al. then propose a variety of political and institutional reforms that must take place before a new system can be built. The essay includes a draft of a legislative bill detailing all the different changes that Morris suggests.

Mukasey, Michael B., former US Attorney General (2007-2009), "Civilian Courts Are No Place to Try Terrorists." *Wall Street Journal*, October 19th, 2009. <http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html?mod=djemEditorialPage>

Mukasey responds to a statement from the Obama administration suggesting the trial of terrorist suspects in civilian courts by arguing that it is a terrible idea. He cites security concerns for all participants as well as the necessities of divulging information that are required in civilian court proceedings. Military commissions, he claims, have a system in place to ensure the safest possible trial without the release of information. Military public

Pistole, John S, Assistant Director, Counterterrorism Division, Federal Bureau of Investigation. "Statement for the Record Before the Senate Judiciary Committee, Subcommittee on Terrorism, Technology, and Homeland Security." October 14th, 2003. <http://www.emergencymgt.net/sitebuildercontent/sitebuilderfiles/JohnSPistole.pdf>

Speaking for the FBI, Pistole discusses the FBI's role in limiting terrorist recruitment in the US prison system and the FBI's involvement in then-recent Guantanamo Bay detentions. Pistole argues that the US correctional system is a viable venue for terrorist recruitment owing to generally dissatisfied nature of inmates. Pistole also gives examples of previous terrorist recruitment that occurred in prisons.

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Powers, Thomas L., PhD in Political Science at the University of Minnesota Duluth. "Due Process For Terrorists?" *The Weekly Standard*, September 22nd 2009.
<http://www.cbsnews.com/stories/2004/01/08/opinion/main592130.shtml>

Powers criticizes the federal government for offering a poor defense for its actions surrounding Guantanamo Bay and other detention centers. He claims the current model is flawed, but also argues that ordinary criminal courts are no place to try terrorism suspects. Instead, he suggests creating a new "terrorism court" specifically designed to offer terrorists more civil liberties while also ensuring the security of the nation and all involved in the proceedings.

Rose, David, Guardian UK reporter, "They Tied Me Up Like A Beast And Began Kicking Me" *The Observer*, May 16th, 2004. <http://www.guardian.co.uk/world/2004/may/16/terrorism.guantanamo>

A British man released from Guantanamo Bay shares stories of his ordeal. He includes details about brutal interrogation practices as well as general, everyday abuses.

Roth, Kenneth, Executive Director of Human Rights Watch. "After Guantanamo: The Case Against Preventive Detention." *Foreign Affairs*, May/June 2008.
http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

Roth discusses the concept of preventive detention (essentially, holding people likely to commit crimes before they commit them) in a historical context before arguing that the system is flawed, especially in the US for the war on terror. He argues that Guantanamo and Abu Grahb led to increased terrorist recruitment, then outlines how the conventional court system can easily solve the detention problem without releasing criminals.

Phillips, Richard, World Socialist Web Site reporter, "David Hicks details abuse in Guantanamo Bay." *World Socialist Web Site* December 18th, 2004. <http://www.wsws.org/articles/2004/dec2004/hick-d18.shtml>

This article tells the tale of David Hicks, an Australian citizen held in Guantanamo Bay. Hicks lays out some of the abusive practices carried out by guards at Guantanamo Bay.

Silverberg, Mark, foreign policy analyst with the Ariel Center for Policy Research. "The Silent War: Wahhabism and the American Penal System." *The New Media Journal*, May 2006.
<http://www.islamdaily.org/en/wahabism/4365.the-silent-war-wahhabism-and-the-american-penal-sy.htm>

Silverberg discusses Wahhabism, a sect of Islam that teaches a radical interpretation of the Quran and the Hadith, in its relation to the prison system in the US. He claims that Saudi money backs legal US organizations that lead prison outreach missions whose goal is to convert inmates to radical Islam and instill in them a hatred for American values. The articles details exactly how these institutions function and raises evidence suggesting that they have been rather effective. Silverberg is troubled that these radical Islamic sects are able to operate in the US and spread their message.

Schulhofer, Stephen J., **Robert B. McKay Professor of Law at New York University**. "Prosecuting Suspected Terrorists: The Role of the Civilian Courts." *Advance: The Journal of the ACS Issue Groups*, Fall 2008.
<http://www.acslaw.org/files/Prosecuting-Suspected-Terrorists.pdf>

Schulhofer argues that proponents of a preventive detention system are exaggerating the need for a new system. Instead, Schulhofer believes the conventional court system is more than able to handle terrorism trials. He refutes a number of arguments against the conventional system, specifically focusing on the need for secrecy. He points out that the Classified Information Procedures Act (CIPA) ensures that the federal court system will be able to prohibit necessary information from reaching the public if the need be.

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Sparago, Marta, Masters in Terrorism and National Security at the Center for Global Affairs at New York University, "Terrorist Recruitment: The Crucial Case of Al Qaeda's Global Jihad Terror Network." *Center for Global Affairs at NYU*, Spring 2007. <http://www.scps.nyu.edu/export/sites/scps/pdf/global-affairs/marta-sparago.pdf>

Sparago thoroughly lays out the history of al Qaeda as a terrorist organization before meticulously analyzing some of the main reasons for terrorist recruitment. Her article travels through demographic data as well as discussions of social, historical, political, religious and personal reasons that people turn to terrorism.

Stimson, Charles, Senior Legal Fellow at the Heritage Foundation, "Testimony before Subcommittee on Crime, Terrorism and Homeland Security," *United States House of Representatives*, April 5th, 2011. <http://www.heritage.org/research/testimony/2011/04/justice-for-america-using-military-commissions-to-try-the-911-conspirators>

In this testimony, Stimson argues that, now that there is general bipartisan support for military tribunals, we must be strong in our resolve to keep using them. He discusses why tribunals are superior to conventional courts and urges Congress to do a great job on the next tribunal to prove to the world that they work.

Toensing, Victoria, former deputy assistant attorney general (criminal division) and chief counsel for the Senate Select Committee on Intelligence, "The Case for Military Tribunals." *The Weekly Standard* February 1st, 2010. <http://www.weeklystandard.com/blogs/where-try-ksm>

Toensing uses the trial of Khalid Sheik Mohammed as a jumping off point for her criticism of the conventional court system's inability to successfully try terrorist suspects. She instead suggests that military tribunals be used to try terrorists.

Vagts, Detlev F., Bemis Professor of Law, emeritus, Harvard Law School, "Military Commissions: The Forgotten Reconstruction Chapter." *American University International Law Review* 2007 <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1020&context=auilr&sei-redir=1>

Vagts looks to historical military commissions in this essay in order to interrogate the historical justifications for military commission constitutionality. He also discusses generally the capacity of the United States to rebuild nations.

Vogt, Eric, Instructor specializing in staff training on anti-terrorism at U.S. Medical Center for Federal Prisons in Springfield, formerly of US Army Intelligence, "Terrorists in Prison: The Challenge Facing Corrections." American Board for Certification in Homeland Security's *Inside Terrorism*, May 29th, 2008. http://www.icpa.ca/tools/download/622/Terrorists_in_Prison.pdf

This document, laid out a bit like a part of a prison guard manual, discusses the dangers of prisoner radicalization by terrorist elements in and out of prison. It also lists signs of impending terrorist attack by prisoners or by individuals outside of prison.

Walker, Avery, Raw Story Reporter., "Former Detainee Paints Harrowing Portrait of Life at Guantanamo Bay." *Raw Story*, June 21st, 2006. http://www.rawstory.com/news/2006/Former_Gitmo_detainee_paints__0621.html

This article compiles an interview of a former Guantanamo Bay detainee. It details some of the practices at Guantanamo from an inside perspective. The interviewee was eventually released but remains changed by his experience.

Wedgwood, Ruth, Professor of Law at Yale Law School, "The Case for Military Tribunals" *Wall Street Journal*, December 3rd, 2001. <http://www.law.yale.edu/news/3297.htm>

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Wedgwood argues that military commissions and prisoner detention both have sound roots in the historical practices of war. She also points out a number of difficulties with trying terrorist suspects in the conventional court system, including security concerns and evidence limitations.

Whiteneck, Daniel, research analyst at the Center for Naval Analyses, "Deterring Terrorists: Thoughts on a Framework." *The Washington Quarterly*. Summer 2005
http://www.twq.com/05summer/docs/05summer_whiteneck.pdf

Whiteneck discusses a few possibilities to further the efforts of terrorist deterrence, especially pertaining to terrorist attacks using WMDs. He suggests a model that deters nations from sponsoring terrorists as well as using nuclear weapons as a deterrent.

Williams, Carol J. Times Staff Writer, "A Day in a Detainee's Life." *LA Times* March 28th, 2008.
<http://articles.latimes.com/2008/mar/28/nation/na-gitmoday28>

This article details the everyday life of the average Guantanamo Bay detainee.

Wittes, Benjamin, fellow and research director at Brookings Institution, and Mark Gitenstein, senior fellow at Brookings Institution. "**A Legal Framework for Detaining Terrorists.**" *Brookings Institution*, November 15th, 2007.
http://www.brookings.edu/~media/Files/Projects/Opportunity08/PB_Terrorism_Wittes.pdf

Writing as a suggestion to 2008 presidential candidates, Wittes and Gitenstein first discuss some of the issues with the debate over the current detention system, arguing that it largely misses the point, which is to create a new, functional system instead of arguing over the old one. They stress the importance of answering a few critical questions before moving forward, then present a few proposals for a functional terrorist trial system.

PART IV: DEFINITIONS

Many of the terms in this resolution can be contextually defined and as such do not need an explicit definition. The term “non-citizens accused of terrorism,” for example, is fairly self-explanatory and it is unlikely that, after listening to a case, a judge would need the distinction between the former and “citizens” explained to them. The phrase “constitutional due process protections” almost requires a contextual definition: as explained above, “due process protections” could refer to virtually any part of the law. Each team would do well to explain briefly in their definition of “due process” which aspects of the law they are referring to—I suggest focusing on the right to a fair, speedy trial in front of a jury and the rights concerning cruel and unusual punishment. Following are three terms that can and should be defined, followed by a discussion of their usage in round.

Ought

Definition: “used to express justice, moral rightness, or the like”

Source: Dictionary.com

Definition: “That which should be done, the obligatory; a statement using ‘ought’, expressing a moral imperative”

Source: Oxford English Dictionary

Definition: “used to express obligation”

Source: Merriam-Webster

Discussion: The meaning of the term “ought” does not frequently change in most LD debates, but these different definitions can yield very different cases. The affirmative on this topic should consider choosing the first or second definition as the language is stronger and more easily tie in with a value of justice or a case that stresses the moral imperative of not subjecting prisoners to torture and the like. The negative will likely be better served by the third definition as the language is less strong, though s/he should be able to argue within either of the other definitions as well.

Extend

Definition: “to increase the scope, meaning, or application of”

Source: Merriam-Webster

Definition: “to increase in length, area, scope, etc”

Source: Dictionary.com

Discussion: Defining this term in the debate round is only really necessary if you worry that the other team is planning to argue that “extend” should be a physical action (i.e., physically hand prisoners a copy of constitutional due process protections but do nothing to actually help them).

Due Process

Definition: “the regular administration of the law, according to which no citizen may be denied his or her legal rights and all laws must conform to fundamental, accepted legal principles, as the right of the accused to confront his or her accusers”

Source: Dictionary.com

Definition: “a course of formal proceedings (as legal proceedings) carried out regularly and in accordance with established rules and principle”

Source: Merriam-Webster

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Discussion: For a complete discussion of due process and how it relates to the topic, please see Section I Part I. When defining due process, it is important to couch the definition in terms of constitutional protections. The negative is likely best served by using the first definition as it explicitly says due process of law applies only to citizens. The affirmative could use the first definition as well if they stopped the definition after the first six words then clarified their meaning in terms of constitutional protections.

PART V: AFFIRMATIVE

SECTION 1-SAMPLE AFFIRMATIVE CASE

“our Nation’s policy decision to use so-called “harsh” interrogation techniques during the War on Terror was a mistake of massive proportions. It damaged and continues to damage our Nation in ways that appear never to have been considered or imagined by its architects and supporters, whose policy focus seems to have been narrowly confined to the four corners of the interrogation room. This interrogation policy – which may aptly be labeled a “policy of cruelty” – violated our founding values, our constitutional system and the fabric of our laws, our over-arching foreign policy interests, and our national security. The net effect of this policy of cruelty has been to weaken our defenses, not to strengthen them, and has been greatly contrary to our national interest.”

Alberto Mora, former US Navy General Counsel

<http://armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf>

Hello ladies and gentlemen. I would like to begin by extending a quick round of thank you’s to all involved. Today we are debating the resolution: **Resolved: The United States ought to extend to non-citizens accused of terrorism the same constitutional due process protections it grants to citizens.** Before presenting my value, criterion and contentions, I will clarify a few of the key terms in today’s debate.

I define “ought” as a term “used to express obligation” (Merriam-Webster)

“extend” as “to increase the scope, meaning, or application of” (Merriam-Webster)

“non-citizens accused of terrorism” as unlawful enemy combatants apprehended or suspected of terrorism by the United States, including those currently held at Guantanamo Bay and other detention centers, and

“Due process” as “the regular administration of the law,” (Dictionary.com) in this case, specifically those parts of the law dictating the rights of the accused, including the right to a speedy trial and protections against indefinite detention without charge and cruel and unusual punishment.

All other terms are contextually defined.

Value: National security

My value today is national security, an extension of the most basic of all values, safety. National security is the prerequisite to all other values, because without a stable nation to inhabit, citizens have no ability to freely pursue any other values.

Criterion: Minimization of terrorist threats

My value criterion is the minimization of terrorist threats. This is a very straightforward way to solve for national security: simply put, the biggest threat to our nation today is terrorism. As the US has the largest and most powerful military in the world, we have very little to fear from other military powers. As 9/11 proved, the only hostile forces that can actually damage our nation are terrorist elements.

Based on this value and criteria, I would like to present three contentions.

Contention 1: Military deterrence of terrorists is impossible

The United States has been locked in a bloody, casualty-filled war against terror for the last 10 years, and yet the threat of terrorism does not seem to have decreased at all. Al-Qaeda leaders are still operating underground terrorist organizations in Iraq, Afghanistan, and all over the world. There have been attempted bombings in many countries, including the 7th of July 2005 terrorist attacks in London and the December 29th, 2009 attempted “Christmas Bombing.” The US’s military policy is clearly not leading to a decrease in terrorism. This is because large-scale deterrence of terrorism is impossible. Terrorists view American military elements as a long arm of a Western power that they hate due to its poor foreign policy choices (as well as a liberal dose of fanaticism among terrorists). Our military conflicts have only provoked an increase in terrorist recruitment. Our military lacks the ability to even threaten what terrorists wish to be kept safe.

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Uri **Fisher** PhD candidate in Political Science at the University of Colorado-Boulder, February **2007**, "Deterrence, Terrorism, and American Values." *Homeland Security Affairs Volume* 3, no. 1, <http://www.hsaj.org/?article=3.1.4> Concern over the cost of compromising our ideals undoubtedly undermines efforts to make our enemies believe we are willing to punish them no matter at what expense. To effectively deter terrorists the U.S. will have to accept the price that comes with violating some human rights, responding with overwhelming force, alienating certain allies, and even eliminating those assets and people that terrorists may hold dear. Any discussion of deterrence that fails to acknowledge the necessity to implement such policies belongs only in ivory towers where the theoretical does not have to be tested by the practical. Deterring terrorists will not happen with strong policy statements alone, it will only happen if the U.S. can clearly illustrate to terrorists and their supporters that they will feel significant pain as the result of their actions.

If our military might is not reducing the risk of terrorism, clearly traditional notions of what constitutes a nation that can adequately protect its people need to be revisited. Clearly, the United States needs to begin pursuing a different course of action to reduce the risk of terrorism. One way to solve this national security crisis is to extend due process guarantees to non-citizens accused of terrorism.

Contention 2: The current system creates more terrorists, and makes existing terrorists harder to catch

One of the major reasons the US has been unable to make good headway in the war against terror is, quite bluntly, because of the US government's terrible track record in the treatment of detainees. According to numerous members of the army, including Alberto Mora, former US Navy General Counsel, the number one major cause of terrorist recruitment is the symbol of Guantanamo Bay and what it says about the United States' laissez-faire attitude towards human life.

Alberto J. **Mora**, Former U.S. Navy General Counsel, June 17th, **2008**, "Statement of Alberto J. Mora." Senate Committee on Armed Services Hearing on the Treatment of Detainees in U.S. Custody <http://armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf>

But the damage to our national security also occurred down at the tactical or operational level. I'll cite four examples: First, there are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are, respectively the symbols of Abu Ghraib and Guantanamo. And there are other senior officers who are convinced that the proximate cause of Abu Ghraib was the legal advice authorizing abusive treatment of detainees that issued from the Department of Justice's Office of Legal Counsel in 2002. Second, allied nations reportedly hesitated on occasion to participate in combat operations if there was the possibility that, as a result, individuals captured during the operation could be abused by U.S. or other forces. Third, allied nations have refused on occasion to train with us in joint detainee capture and handling operations because of concerns about U.S. detainee policies. And fourth, senior NATO officers in Afghanistan have been reported to have left the room when issues of detainee treatment have been raised by U.S. officials out of fear that they may become complicit in detainee abuse.

Not only are more terrorists being created because of the US's poor public image, but more soldiers are dying as a result. Both of these factors dramatically reduce national security. Additionally, the nation's awful detention practices cause civilians in Iraq, Afghanistan and elsewhere to be exceedingly reticent towards US military investigators trying to apprehend terrorists, making it even less likely terrorists are brought to justice. The problems don't stop there: even among its allies, the United States' prisoner abuses are a sticking point, causing recalcitrance amongst allied leaders when asked to help donate troops to the wars in Iraq and Afghanistan. Other nations' soldiers refuse to fight alongside the US' because they don't want to be responsible for future torture of terrorist suspects. Far from protecting us, our government's choice to detain terrorist suspects without due process is directly responsible for increased risk to national security.

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Contention 3: The conventional court system can handle terrorism trials

If non-citizens accused of terrorism are granted due process rights, they will not only be freed from the tyranny of the detention process, but also will be guaranteed a speedy trial in front of a jury. Some proponents of the detention system have argued that the conventional system can't handle terrorist suspects, but they are incorrect. The conventional court system has shown it can handle sensitive, security-oriented trials time and time again.

Kenneth **Roth**, Executive Director of Human Rights Watch, May/June **2008**, "After Guantanamo: The Case Against Preventive Detention." Foreign Affairs http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

Fortunately, there is no need to contemplate such a radical departure from U.S. constitutional norms. **U.S. courts are fully capable of addressing today's terrorist threat. The U.S. criminal justice system has successfully dealt with a broad range of serious security threats**, from espionage at the height of the Cold War to ruthless drug-trafficking enterprises. **In none of these cases has the United States' strong tradition of protecting defendants' due process rights stood in the way.**

The Classified Information Protection Act ensures that classified information will not be leaked to terrorists abroad. The existence of the crime of conspiracy means that all terrorist suspects will be able to have charges brought against them, ensuring they will fit into the conventional court system without difficulty. In addition, having public trials will also show the rest of the world that the United States is finally taking a stand against human rights abuses and is willing to treat even suspected terrorists as they would their citizens. This will reduce terrorist recruitment, lead to the apprehension of more terrorists through international cooperation, and undoubtedly protect national security far more than the detention system does. For this reason and the reasons specified in my other two contentions, I urge an affirmative ballot in today's debate.

Deterrence of Terrorists is Impossible pt 1

Deterrence fails for many reasons

Uri **Fisher** PhD candidate in Political Science at the University of Colorado-Boulder, February **2007**, "Deterrence, Terrorism, and American Values." *Homeland Security Affairs Volume* 3, no. 1, <http://www.hsaj.org/?article=3.1.4>
By now, the arguments are familiar for why deterring a group such as al-Qaeda is a complex endeavor. First, terrorists are highly motivated and therefore they are willing to risk anything – their lives in the case of suicide-bombers – to accomplish a goal. Second, the political goals of terrorist groups are often very broad, idealistic, ambiguous, or unclear. Third, terrorists are difficult to locate. Terrorist networks operate trans-nationally and therefore make reprisals difficult to "return to sender." Fourth, it remains undecided how deterrence can work against an enemy that understands that the ultimate policy goal of the U.S. is not to coexist with groups like al-Qaeda, but to eradicate them. Finally, terrorists often attempt to incite retaliation. Terrorists have used the collateral damage caused by retaliatory efforts to foment more support for their organization or broader cause. In total, the deck is stacked against deterrence playing a significant role in U.S. counterterrorism policy.

Deterrence fails because US foreign policy is based on US morals

Uri **Fisher** PhD candidate in Political Science at the University of Colorado-Boulder, February **2007**, "Deterrence, Terrorism, and American Values." *Homeland Security Affairs Volume* 3, no. 1, <http://www.hsaj.org/?article=3.1.4>
U.S. foreign policy has always been a manifestation and extension of the basic values, principles, and beliefs on which the American republic was founded. In dealing with terrorists, the U.S. has sought rational, reasoned, and relatively proportional responses in order to maintain the respect of the international community and its own citizens. However, to deter certain terrorist elements the U.S. will ultimately find it necessary to compromise certain democratic values that have long guided its foreign policymaking. Because the U.S. cares about projecting an image of virtue, it is unlikely that it will ever truly be able to put at risk what terrorist elements value. The current war on terrorism has already revealed the inherent conflict between maintaining a foreign policy that reflects the reality of U.S. capabilities while remaining dedicated to democratic ideals.

Terrorist threats can always thrive in nations with poor security

Daniel **Whiteneck**, research analyst at the Center for Naval Analyses, Summer **2005**, "Deterring Terrorists: Thoughts on a Framework." *The Washington Quarterly*.
http://www.twq.com/05summer/docs/05summer_whiteneck.pdf

Of course, this is not to say that the United States can or should actually hold every state accountable for the acts of terrorists who have used the state's territory or have otherwise exploited the state's resources. Terrorists may choose to encamp within a state whose government is too weak to maintain its sovereignty or that lacks the resources to defend all of its borders. It is possible for a state to have a compartmented government, in which one agency may support terrorist activities independent of oversight by the head of state. Furthermore, WMD or WMD materials may simply be stolen from a state's weapons cache. Although the United States can demand that no state knowingly provide a terrorist group with the material or technology required to develop WMD and insist that states be vigilant in controlling the use of their territory, particularly if Washington is willing to provide military or law enforcement assistance when necessary, it cannot expect poor states to install domestic intelligence-gathering capabilities similar to those of the United States or other Western nations. Less-developed African countries have little capability to control their borders. Similarly, in Asia and possibly even South America, some states do not have sufficient resources to detect discrete terrorist cell activities in large cities, let alone in the more remote areas of their territories.

Deterrence of Terrorists is Impossible pt 2

Deterrence fails because the US is not willing to abandon its moral authority—and terrorists know this

Uri **Fisher** PhD candidate in Political Science at the University of Colorado-Boulder, February **2007**, “Deterrence, Terrorism, and American Values.” *Homeland Security Affairs Volume* 3, no. 1, <http://www.hsaj.org/?article=3.1.4> Most examinations of deterrence and U.S. counterterrorism policy make the common argument that the U.S. will have to communicate a clear message of punishment against terrorist elements, without actually considering toward whom and where these threats should be directed. Moreover, in those instances where authors consider targets of retaliation, potential threats of punishment rarely strike at what terrorists truly hold dear. Frequently, policy recommendations represent little more than establishing obstacles to terrorist networks, not meaningful attempts to change the decision-calculus of terrorist elements. The targets the U.S. will be forced to retaliate against and the manner in which these targets will have to be engaged may render the moral price of establishing a real deterrent mechanism too high. Deterrence is impossible against terrorists, not because it is theoretically inapplicable, but because the U.S. is too concerned with maintaining its moral authority in the world. The aspiration of the U.S. to take the “moral high road” will signal to terrorists that the things they value most are actually not in grave danger. When attempting to deter terrorists the “ethical and necessary” ultimately will collide.

Deterrence will never work until the US can make it clear to terrorists that they will go to any lengths to punish terrorism—which won’t happen

Uri **Fisher** PhD candidate in Political Science at the University of Colorado-Boulder, February **2007**, “Deterrence, Terrorism, and American Values.” *Homeland Security Affairs Volume* 3, no. 1, <http://www.hsaj.org/?article=3.1.4> Concern over the cost of compromising our ideals undoubtedly undermines efforts to make our enemies believe we are willing to punish them no matter at what expense. To effectively deter terrorists the U.S. will have to accept the price that comes with violating some human rights, responding with overwhelming force, alienating certain allies, and even eliminating those assets and people that terrorists may hold dear. Any discussion of deterrence that fails to acknowledge the necessity to implement such policies belongs only in ivory towers where the theoretical does not have to be tested by the practical. Deterring terrorists will not happen with strong policy statements alone, it will only happen if the U.S. can clearly illustrate to terrorists and their supporters that they will feel significant pain as the result of their actions.

American Military Policy invigorates terrorists

Davis **Allsop**, University of St. Andrews, April **2010**, “The Viability of Deterring Terrorism.” e-IR.com <http://www.e-ir.info/?p=4330>

On the one hand, deterrence in international relations is a threat of retaliation by extreme force that is made prior to a terrorist attack. The intended outcome is that a terrorist organization will go through a traditional cost-benefit analysis and deem its attack not worth the consequences. On the other hand, criminal deterrence is the threat of severe and lengthy penalties to be applied after the terrorist attack. These two sub-sections of deterrence are in a struggle for primacy in the application of deterrence to counterterrorism: “While terrorism is a criminal offence, responses to terrorism do not fit entirely within the traditional penal approach to deterrence that is applied to the majority of crimes. Similarly, the status of terrorists means that the international relations approach to deterrence may not be entirely appropriate either.” In Jacqueline Gray and Margaret Wilson’s 2006 study of 178 British university students, diplomacy with terrorist states was generally considered as ‘deterrence’, while military action was perceived as ‘vengeance’. This finding suggests that counterterrorism military operations do not send a deterrence message, but rather invigorate would-be terrorists. As a result, military operations are classified as “preemptive attacks”, and deterrence, as a counterterrorism strategy, is understood to be a threat of diplomatic action and criminal prosecution intended to diminish the attractiveness of terrorist activity; however, the definition still is not yet complete.

Deterrence of Terrorists is Impossible pt 3

Deterrence is the favored strategy of the US government, but it doesn't work

Bruno **Frey**, Professor of Economics at the Institute for Empirical Economic Research, University

of Zurich and Simon **Luechinger**, research assistant, November **2002**, "How to Fight Terrorism: Alternatives to Deterrence." Institute for Empirical Research in Economics, University of Zurich.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=359824

Even if the "benevolence" strategy leads to a superior outcome for the targeted society as a whole, the government may prefer a deterrence strategy based on "threats". The interests of most well-organised groups are clearly aligned against a "benevolence" strategy. Two major organisations in society, the police and the army, must expect to lose. They receive fewer funds and can no longer profit from a deterrence policy in which they play a crucial role. The alternative strategy does not build on their services; on the contrary. The "politically" defined costs of a deterrence policy therefore differ markedly from those "economically" defined. The government is likely to favour the well-organised groups, the army and the police, at the expense of the remaining population which experiences only a small reduction in its utility. The government may moreover prefer a deterrence policy, because they can therewith demonstrate to the population that they are determined to "fight terrorism at all costs". The "macho"-image may help them to win elections, especially if there is no open discussion of the merits and demerits of the various strategies. In contrast to the utility of a deterrence policy, the benefits of alternative strategies are not directly attributed to the government in power. A "benevolence" strategy reduces the decision power of the politicians, especially if the conflict is settled by way of an open discussion and a (direct) democratic decision. The strategy of offering opportunities has the best chance of being undertaken when deterrence policy has failed. In such times of crisis, the various groups involved may turn to unorthodox policies.

Deterrence strategies actually increase terrorism

Bruno **Frey**, Professor of Economics at the Institute for Empirical Economic Research, University

of Zurich and Simon **Luechinger**, research assistant, December **2002**, "Terrorism: Deterrence May Backfire."

Institute for Empirical Research in Economics, University of Zurich. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=359823

Policies of fighting terrorism by using deterrence and by decentralisation may interact. Deterrence policy tends to increase political and economic centralisation. In order to curb terrorism by deterrence, the central government tends to reduce democratic rights of citizens and to take power away from lower levels of government. Increasing expenditures benefit the military-industrial complex (to use President Eisenhower's term), which is far more centralised and monopolistic than other parts of the economy. More decision-making and implementation power is then vested in one location, making it vulnerable to terrorist attacks. Such a deterrence policy does not only shift up terrorists' cost curve upwards, but at the same time also their benefit curve. The two effects are countervailing and it remains open whether the equilibrium amount of terrorist activity actually falls, as generally expected. It may well be that the increasing centralisation of the economy and polity so much raises the attraction to terrorists to such an extent that the equilibrium amount of terrorism increases.

Poor Treatment of Detained Non-Citizens Leads to Increased Terrorism

pt 1

Wrongful preventive detention discourages civilians from cooperating to fight terrorism

Kenneth **Roth**, Executive Director of Human Rights Watch, May/June **2008**, "After Guantanamo: The Case Against Preventive Detention." Foreign Affairs http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

Preventive detention also discourages citizens from cooperating with counterterrorist investigations, a crucial factor in uncovering terrorist plots. Counterterrorism experts report that information gleaned from interrogating detainees is far less important than information delivered by members of the general public who see something suspicious and report it. For example, information given by relatives of the perpetrators and the general public was key to the arrest of those responsible for the attempted bombings in London on July 21, 2005. Similarly, a British Muslim who found an acquaintance's behavior suspicious led the police to discover the plot to bomb several transatlantic flights using liquid explosives in August 2006. Because sympathy for the victims of abusive counterterrorism policies tends to be greatest in the communities that give rise to terrorists, policies such as preventive detention jeopardize this vitally important source of intelligence.

Inhumane detention practices are directly responsible for massive terrorist recruitment

Matthew Alexander, Former Member of the US Airforce, Leader of the Interrogation Team that Led to the Capture of Abu Musab al-Zarqawi, leader of al-Qaeda in Iraq, November 30th **2008**, "I'm Still Tortured by What I Saw in Iraq." Washington Post

<http://www.washingtonpost.com/wp-dyn/content/article/2008/11/28/AR2008112802242.html>

I learned in Iraq that the No. 1 reason foreign fighters flocked there to fight were the abuses carried out at Abu Ghraib and Guantanamo. Our policy of torture was directly and swiftly recruiting fighters for al-Qaeda in Iraq. The large majority of suicide bombings in Iraq are still carried out by these foreigners. They are also involved in most of the attacks on U.S. and coalition forces in Iraq. It's no exaggeration to say that at least half of our losses and casualties in that country have come at the hands of foreigners who joined the fray because of our program of detainee abuse. The number of U.S. soldiers who have died because of our torture policy will never be definitively known, but it is fair to say that it is close to the number of lives lost on Sept. 11, 2001. How anyone can say that torture keeps Americans safe is beyond me -- unless you don't count American soldiers as Americans.

Cruel detention practices reduces international cooperation in the war on terror

Alberto J. **Mora**, Former U.S. Navy General Counsel, June 17th, **2008**, "Statement of Alberto J. Mora." Senate Committee on Armed Services Hearing on the Treatment of Detainees in U.S. Custody

<http://armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf>

These adverse foreign policy consequences would inevitably damage our national security strategy and our operational effectiveness in the War on Terror. Our ability to build and sustain the broad alliance required to fight the war was compromised. International cooperation, including in the military, intelligence, and law enforcements arenas, diminished as foreign officials became concerned that assisting the U.S. in detainee matters could constitute aiding and abetting criminal conduct in their own countries. As the difficulties of Prime Ministers Tony Blair and Jose Maria Aznar demonstrated, seemingly every European politician who sought to ally his country with the U.S. effort on the War on Terror incurred a political penalty.

Poor Treatment of Detained Non-Citizens Leads to Increased Terrorism **pt 2**

National Security is directly compromised in a number of ways by prisoner abuse

Alberto J. **Mora**, Former U.S. Navy General Counsel, June 17th, **2008**, "Statement of Alberto J. Mora." Senate Committee on Armed Services Hearing on the Treatment of Detainees in U.S. Custody
<http://armed-services.senate.gov/statemnt/2008/June/Mora%2006-17-08.pdf>

But the damage to our national security also occurred down at the tactical or operational level. I'll cite four examples: First, there are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are, respectively the symbols of Abu Ghraib and Guantanamo. And there are other senior officers who are convinced that the proximate cause of Abu Ghraib was the legal advice authorizing abusive treatment of detainees that issued from the Department of Justice's Office of Legal Counsel in 2002. Second, allied nations reportedly hesitated on occasion to participate in combat operations if there was the possibility that, as a result, individuals captured during the operation could be abused by U.S. or other forces. Third, allied nations have refused on occasion to train with us in joint detainee capture and handling operations because of concerns about U.S. detainee policies. And fourth, senior NATO officers in Afghanistan have been reported to have left the room when issues of detainee treatment have been raised by U.S. officials out of fear that they may become complicit in detainee abuse.

Terrorists share a collective identity, meaning an attack on 1 is an attack on all

Marta **Sparago**, Masters in Terrorism and National Security at the Center for Global Affairs at New York University, Spring **2007**, "Terrorist Recruitment: The Crucial Case of Al Qaeda's Global Jihad Terror Network." Center for Global Affairs, NYU. <http://www.scps.nyu.edu/export/sites/scps/pdf/global-affairs/marta-sparago.pdf>
The notion of community is very strong in the Muslim world. Unlike in the West, there is much less of an emphasis on the individual as a person and more on the individual as part of the community. This communal bonding does help explain the general mindset in many areas, including how individuals interact with each other and how they perceive the West. For those individuals who turn to terrorism, they are not necessarily embracing violence for what has been done to them specifically, but for what has been done to their people. They do not make the distinction between themselves and their communities or even their religious brethren across the globe: With the transnational Muslim identity comes a sense of universal grievance. The local and global can no longer be distinguished. Now, the sufferings of Muslims every have become even more palpably the responsibility of every Muslim. They have internalized an external assault (perceived or otherwise) on their community, thus designating themselves the recipient of this assault.

Marta **Sparago**, Masters in Terrorism and National Security at the Center for Global Affairs at New York University, Spring **2007**, "Terrorist Recruitment: The Crucial Case of Al Qaeda's Global Jihad Terror Network." Center for Global Affairs, NYU. <http://www.scps.nyu.edu/export/sites/scps/pdf/global-affairs/marta-sparago.pdf>
for certain individuals who live in circumstances where the prospect for communal action and social bonding may be restricted, the terrorist organization may provide the individual a needed outlet: The hate mongering leader plays a crucial organizing role, provides a "sense making" explanation for what has gone wrong in their lives, identifying the external enemy as the cause, as well as drawing together into a collective identity otherwise disparate individuals who may be discontented and aggrieved, but who, without the powerful presence of a leader, will remain isolated and individually aggrieved. This social network is attractive to many people. In certain areas where conflict and instability are common, the terrorist organization gives the individual a social construct that may be lacking. This acts as a beacon for terrorist recruitment. The group embraces the recruit as much as the recruit embraces the terrorist ideology. This provides the recruit with the structure to act for a purpose greater than his own. The individual thus surrenders his own identity to that of the group. Survival of the group and the cause takes precedence over the individual existence.

Conventional Justice System Can Conduct Terrorist Trials/Detention

US court system has a history of dealing with security threats despite due process

Kenneth **Roth**, Executive Director of Human Rights Watch, May/June **2008**, "After Guantanamo: The Case Against Preventive Detention." Foreign Affairs http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

Fortunately, there is no need to contemplate such a radical departure from U.S. constitutional norms. **U.S. courts are fully capable of addressing today's terrorist threat. The U.S. criminal justice system has successfully dealt with a broad range of serious security threats**, from espionage at the height of the Cold War to ruthless drug-trafficking enterprises. **In none of these cases has the United States' strong tradition of protecting defendants' due process rights stood in the way.**

Trying people for conspiracy means a crime doesn't need to be committed to convict

Kenneth **Roth**, Executive Director of Human Rights Watch, May/June **2008**, "After Guantanamo: The Case Against Preventive Detention." Foreign Affairs http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

the crime of conspiracy is sufficient to address today's terrorist threat because it is both backward and forward looking. Under U.S. law, a conspiracy can occur whether or not an intended illegal act has been carried out. Much as with the French crime of association de malfaiteurs, all that must be proved is that two or more people agreed to pursue an illegal plan and took at least one step to advance it. **This should cover most terrorist plans:** the lone wolf terrorist is rare, and al Qaeda and its spinoffs have typically relied on numerous participants to agree on a plan and pursue it. **The same intelligence that allows investigators to identify and prevent a terrorist plot should allow them to prosecute the participants for conspiracy. Similarly, the crime of providing material support to terrorists can occur even when a terrorist act is only in preparation and has not yet been committed.**

The conventional system is more efficient than military tribunals

Stephen J. **Schulhofer**, Robert B. McKay Professor of Law at New York University, **2008**, "Prosecuting Suspected Terrorists: The Role of the Civilian Courts." Advance: The Journal of the ACS Issue Groups. <http://www.acslaw.org/files/Prosecuting-Suspected-Terrorists.pdf>

The need for a special system of tribunals has been wildly exaggerated. **The federal courts are already well-equipped to protect classified information and to handle all the other supposed complexities of terrorism trials.** Quite simply, **terrorism suspects can and should be indicted and tried for their alleged crimes in the ordinary civilian court system. That approach will avoid further damage to America's reputation for respecting human rights, and it will enhance our ability to win the whole-hearted cooperation of our allies in the global counterterrorism effort, including our ability to extradite terror suspects held in allied nations abroad.** That approach will **ensure an essential check on government power through independent judicial oversight of the momentous executive decision to deprive an individual of his liberty.** Not least important, and somewhat paradoxically, **that approach will also permit much more expeditious and efficient prosecution, conviction and punishment than a newly created system of military tribunals will ever be able to achieve.** Supporters of the new military tribunals are mostly well-intentioned patriots who are genuinely disturbed by the prospect of jeopardizing classified information in conventional trials. But in many instances they also seem to be influenced by instinctive mistrust of judicial oversight, by unwarranted confidence in the probity and competence of an unchecked executive, and by a failure to focus on a pragmatic assessment of the most practical means available to get the job done. **Detainees who have indeed perpetrated or attempted to launch acts of brutal violence against defenseless civilians should be convincingly convicted and promptly, severely punished; yet the military tribunal system has allowed these individuals to paint themselves as victims. Reliance on proven procedures of unquestioned legitimacy would eliminate that distraction and quickly return the focus of attention, as it should be, to the actual culpability of the alleged perpetrators.**

Courts maintain secrecy

Concerns over information gathering, evidence usage are overblown

Kenneth **Roth**, Executive Director of Human Rights Watch, May/June **2008**, "After Guantanamo: The Case Against Preventive Detention." Foreign Affairs http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

Another objection to conventional prosecutions is that they make it harder for interrogators to obtain information from suspects. Under the Sixth Amendment to the U.S. Constitution, a suspect facing criminal charges is entitled to a lawyer, who will generally tell his or her client not to talk to interrogators. But in fact, many criminal suspects with lawyers end up cooperating with interrogators because doing so can shorten the prison time they face. Moreover, the constitutional limits on a prosecutor's ability to question a suspect without counsel need not interfere with parallel but separate questioning aimed at investigating other suspects or preventing terrorism. Even if a suspect's right to counsel has been violated, the Constitution only prohibits prosecutors from using the information derived from the flawed interrogation at trial; it does not forbid other investigators, such as those trying to prevent future terrorist acts, from questioning the suspect without a lawyer present, so long as these investigators do not relay his or her words (or leads based on what he or she said) to the prosecution team.

Kenneth **Roth**, Executive Director of Human Rights Watch, May/June **2008**, "After Guantanamo: The Case Against Preventive Detention." Foreign Affairs http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

Preventive-detention advocates also oppose criminal prosecution because many terrorism suspects have been subjected to torture and other harsh interrogation methods, the fruits of which no ordinary judge would admit at trial. This, they argue, makes criminal prosecution impossible. But it would be a perversion of justice to invoke the illegality of coercing evidence in order to justify the further trampling of suspects' rights through preventive detention. Moreover, coerced confessions are not the only route to criminal convictions. A review of the hearings held before the Combatant Status Review Tribunals at Guantanamo shows that the government often possesses plenty of evidence unrelated to abusive interrogation -- from computers and cell phones seized, financial records, and witnesses who have cooperated voluntarily. The U.S. government has tacitly acknowledged this point by reinvestigating the major Guantanamo suspects using allegedly "clean teams" in an effort to free prosecutions from the taint of previously coerced statements and allow them to go forward.

Secrecy is empirically safe in the conventional system thanks to CIPA

Kenneth **Roth**, Executive Director of Human Rights Watch, May/June **2008**, "After Guantanamo: The Case Against Preventive Detention." Foreign Affairs http://almanthour.org/index.php?view=article&catid=22%3Aenglish-section&id=66%3Aafter-guantanamo-the-case-against-preventive-detention-&format=pdf&option=com_content&Itemid=38

Finally, opponents of criminally prosecuting terrorism suspects argue that such trials force the government to reveal its secret sources and intelligence-gathering methods. But this problem is not insurmountable. It often arises when sensitive investigations involving national security, drug trafficking, or organized crime lead to prosecution. In such circumstances, defense lawyers typically try to force the government to either reveal sensitive secrets or drop the case. To address these situations, Congress enacted the Classified Information Procedures Act (CIPA) in 1980. The law empowers federal judges to review defense counsels' requests for classified information with the aim of sanitizing that information as much as possible or restricting its disclosure to only those defense lawyers with security clearance. The purpose of the act is to protect a defendant's right to confront all the evidence against him or her while safeguarding legitimate intelligence secrets. If due process requirements cannot be met without revealing secret information, the government must either drop the relevant charges or declassify the information. Judges who have tried cases under CIPA speak of it as a reasonable compromise between fairness and security. CIPA rules have not forced the government to abandon even one of the dozens of international terrorism cases it has prosecuted since 9/11.

Life in Detention Is Terrible pt 1

Prisoners are interrogated frequently and violently

Avery **Walker**, Raw Story Reporter, June 21st, **2006**, "Former Detainee Paints Harrowing Portrait of Life at Guantanamo Bay." Raw Story http://www.rawstory.com/news/2006/Former_Gitmo_detainee_paints__0621.html
Ahmed was stripped down, given body and cavity searches and had his head and beard shaved. He was then dressed in goggles, a woolen cap, a jacket and what jailers called a "three piece suit": a chain that wraps around the waist, connecting handcuffs to shackles. He was on his way to Guantanamo. There, **abuse continued as "the rule, not the exception," Ahmed recalls. Interrogations would be as often as twice a day, or as lengthy as twelve hours, he adds.** Such interrogations were done under the pretense that the world was unaware prisoners were being held at the base, he says. But thanks to the guards at Kandahar, Ahmed knew better. "I believed people knew detainees were in Guantanamo," he explains. "But we were told that nobody cares and nobody is going to be doing anything about it. After being told that a hundred, a thousand times, you start to believe it."

Attempted suicide and pharmaceutical doping occurs frequently

Avery **Walker**, Raw Story Reporter, June 21st, **2006**, "Former Detainee Paints Harrowing Portrait of Life at Guantanamo Bay." Raw Story http://www.rawstory.com/news/2006/Former_Gitmo_detainee_paints__0621.html
According to Ahmed, **suicide attempts**, though recently gaining media attention, **have never been uncommon at Guantanamo Bay.** "There's hunger strikes, there's protesting, not talking in interrogation," Ahmed says, "but there's really nothing [else] you can do." As a result, Ahmed claims that **suicides, either out of protest or desperation, have become commonplace.** "I witnessed many, many suicide attempts in Guantanamo," Ahmed told RAW STORY. "American officials have actually said about 26 or 46 or something like that, but when I was there, I can recall **hundreds of attempts.**" **US personnel actively attempt to prevent suicide on the base but with methods he believes to be counter-productive to improving detainee well-being.** **"If the soldiers knew that you had attempted, or were going to attempt [suicide], they would take away your towels, your clothes. Basically, you would be naked in your cell."** Ahmed also raised disturbing allegations relating to the camp's psychiatric policies. **He describes a prison population that is largely unaware they are being given a psychotropic drug.** "There was no help given in terms of psyche or anything," he explains. **"The only medication they gave you was Prozac--for everything, they gave you Prozac. They offered me Prozac."** **"Most detainees don't even know what Prozac is," he adds. "They think it is a headache pill or stomach ache pill."** The popular anti-depressant, also known as Fluoxetine hydrochloride, is known to have the side-effects of trembling, weakness, restlessness, skin rash, insomnia, itching and changes in weight. When reached for outside confirmation, attorneys for Guantanamo Bay inmates directed RAW STORY to earlier statements taken from the Tipton three, indicating that all made the Prozac allegation. Mr. Rasul has claimed in statements to US courts that one doctor on the base was an exception to the rule, attempting to address situational issues like loneliness before offering prisoners the drug.

Prisoners are heavily controlled and rarely get to leave their cells

Carol J. **Williams**, Times Staff Writer, March 28th, **2008**, "A Day in a Detainee's Life." LA Times <http://articles.latimes.com/2008/mar/28/nation/na-gitmoday28>
Prisoners eat their meals in their cells. They seldom leave them. Each is equipped with a bunk, sink and toilet. Only the most compliant detainees can keep a toothbrush, toothpaste and soap. **Those being disciplined or segregated from others must ask for their hygiene items from guards,** who monitor their use, then remove them. To prevent a toothbrush from being shaved into a shank, the detainees are issued stout plastic rings with bristles attached. **When they do leave their cells, prisoners are shackled and escorted** -- to and from showers, recreation pens, interrogation interviews, and a meeting or two each year with their lawyers. They leave their cells in the "hard facilities" of Camps 5, 6 and the new 7 for no other reason, unless they are found to need medical or dental treatment when corpsmen make periodic rounds. **Once a man has refused nine consecutive meals, he is considered a hunger striker and brought to the detention medical center. His head, arms and legs are strapped to a "restraint chair" while a tube is threaded through his nose and throat into the stomach. A doctor-recommended quantity of Ensure is administered.**

Life in Detention Is Terrible pt 2

Prisoners who don't submit to interrogation are abused

Tarek **Dergoul**, former Guantanamo prisoner, May 16th, **2004**, "They Tied Me Up Like A Beast And Began Kicking Me" The Observer. Article written by David Rose.

<http://www.guardian.co.uk/world/2004/may/16/terrorism.guantanamo>

I was in extreme pain and so weak that I could barely stand. It was freezing cold and I was shaking like a washing machine. They questioned me at gunpoint and told me that if I confessed I could go home. They had already searched me and my cell twice that day, gone through my stuff, touched my Koran, felt my body around my private parts. And now they wanted to do it again, just to provoke me, but I said no, because if you submit to everything you turn into a zombie. I heard a guard talking into his radio, "ERF, ERF, ERF," and I knew what was coming - the Extreme Reaction Force. The five cowards, I called them - five guys running in with riot gear. They pepper-sprayed me in the face and I started vomiting; in all I must have brought up five cupfuls. They pinned me down and attacked me, poking their fingers in my eyes, and forced my head into the toilet pan and flushed. They tied me up like a beast and then they were kneeling on me, kicking and punching. Finally they dragged me out of the cell in chains, into the rec yard, and shaved my beard, my hair, my eyebrows.

Torture is commonplace and accepted in detention centers

Richard **Phillips**, World Socialist Web Site reporter, December 18th, **2004**, "David Hicks details abuse in Guantanamo Bay." World Socialist Web Site. <http://www.wsws.org/articles/2004/dec2004/hick-d18.shtml>

Hicks is one of four Guantánamo Bay prisoners formally charged on allegations of terrorist activity and due to face trial early next year. He explained that he was "beaten before, after, and during interrogations... [and] threatened, directly and indirectly, with firearms and other weapons before and during interrogations" during his three-year detention. [...] He states that he has been hit in the face, head, feet, and torso with hands, fists and other objects, including rifle butts. "At one point, a group of detainees, including myself, was subjected to being randomly hit over a eight-hour session while handcuffed and blindfolded," he said. His head was rammed into the ground several times. [...] Hicks' affidavit demonstrates, yet again, that physical and psychological abuse is part of the jail's standard operating procedure. [...] "I have witnessed the activities of the Internal Reaction Force (hereinafter 'IRF'), which consists of a squad of soldiers that enter a detainee's cell and brutalise him with the aid of an attack dog. The IRF invasions were so common that the term to be 'IRF'ed' became part of the language of the detainees. I have seen detainees suffer serious injuries as a result of being IRF'ed. I have seen detainees IRF'ed while they were praying, or for refusing medication." Hicks stated that he was deprived of sleep as a "matter of policy", forcibly injected with unknown sedatives—his requests for information about the drugs ignored—and beaten while under their influence.

Internal memos reveal torture was expected to occur

Laurel E. **Fletcher**, Director of the International Human Rights Law Clinic, UC Berkeley School of Law, November **2008**, "Guantanamo and its Aftermath." Human Rights Center and International Human Rights Law Clinic, UC Berkeley http://www.law.berkeley.edu/HRCweb/pdfs/Gtmo-Aftermath_2.pdf

The Bush Administration's argument for authorization of harsh interrogation techniques can be traced to a legal memorandum that Assistant Attorney General Jay S. Bybee co-wrote with John Yoo in August 2002. Contrary to all previous definitions of torture in international law, the memo opined that abuse does not rise to the level of torture under U.S. law unless such abuse inflicts pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." Mental torture required, in this legally dubious view, "suffering not just at the moment of infliction but... lasting psychological harm, such as seen in mental disorders like post-traumatic stress disorder." To qualify as torture, the infliction of pain had to be the "precise objective" of the abuse rather than a byproduct. An interrogator could know that his actions could cause pain, but "if causing such harm is not the objective, he lacks the requisite specific intent" to be found guilty of torture. The memo, in blatant disregard of the U.S.'s obligations under international law, also asserted that domestic laws banning torture could not constitutionally be applied to interrogations ordered by the president in his capacity as commander in chief of the armed forces and that the torture of suspected terrorists for interrogation purposes would be lawful if justifiable on grounds of "necessity" and "selfdefense."

Life in Detention Is Terrible pt 3

Prisoners underwent torturous interrogations

David **Rose**, Guardian UK reporter, May 16th, **2004**, "They Tied Me Up Like A Beast And Began Kicking Me" The Observer. <http://www.guardian.co.uk/world/2004/may/16/terrorism.guantanamo>
For one period of about a month last year, he said, guards would take him every day to an interrogation room in chains, seat him, chain him to a ring in the floor and then leave him alone for eight hours at a time. 'The air conditioning would really be blowing - it was freezing, which was incredibly painful on my amputation stumps. Eventually I'd need to urinate and in the end I would try to tilt my chair and go on the floor. They were watching through a one-way mirror. As soon as I wet myself, a woman MP would come in yelling, "Look what you've done! You're disgusting." ' Afterwards he would be taken back to his cell for about three hours. Then the guards would reappear and in Guantanamo slang tell him he was returning to the interrogation room: 'You have a reservation. The process would begin again. Dergoul also described the use of what was known as the 'short shackle' - steel bonds pulled tight to keep the subject bunched up, while chained to the floor. 'After a while, it was agony. You could hear the guards behind the mirror, making jokes, eating and drinking, knocking on the walls. It was not about trying to get information. It was just about trying to break you.'

Prisoners were frequently terrified

Laurel E. **Fletcher**, Director of the International Human Rights Law Clinic, UC Berkeley School of Law, November **2008**, "Guantanamo and its Aftermath." Human Rights Center and International Human Rights Law Clinic, UC Berkeley http://www.law.berkeley.edu/HRCweb/pdfs/Gtmo-Aftermath_2.pdf
At Kandahar, soldiers took the naked detainees from the pin-down to a large tent where a doctor performed a quick medical examination. The procedure ended with a rectal search. "One MP would put his knee into the back of one of the prisoner's knees while the other put his hand on the prisoner's neck and pushed it down until the prisoner was properly positioned," writes Mackey. "The doctor's probe always prompted new shrieks from prisoners convinced they were about to be raped." From there, detainees were forced face down onto "a dusty, stained mat at the end of the tent." "It was like one of those pictures from Abu Ghraib. Most of us were naked, and they would pile us up one on top of the other. I still had my pants on, but the guys on top of the pile were completely naked.... [T]hey told us, "if you move we will shoot you." So we didn't move. We just stayed where we were. They kept sending people in and piling them on top of us. And nobody dared to move."

Forced nudity was intensely dehumanizing for many detainees

Laurel E. **Fletcher**, Director of the International Human Rights Law Clinic, UC Berkeley School of Law, November **2008**, "Guantanamo and its Aftermath." Human Rights Center and International Human Rights Law Clinic, UC Berkeley http://www.law.berkeley.edu/HRCweb/pdfs/Gtmo-Aftermath_2.pdf
Of the many abuses endured at Kandahar and Bagram, one of the most humiliating was forced nudity. Many respondents said the humiliation of strip searches and the disgrace of collective showers, defecation in public, and other forced exposures offended both their personal dignity and their identity as Muslims. The Quran itself cautioned against nudity, a state considered impure. A Muslim's life, according to Tunisian professor of sociology Abdelwahab Bouhdiba, is "a succession of states of purity.... The impure man comes dangerously close to evil.... The angels who normally keep watch over man and protect him leave him as soon as he ceases to be pure. So he is left without protection, despiritualized, even dehumanized." Moazzam Begg, in his memoir Enemy Combatant: My Imprisonment at Guantánamo, Bagram, and Kandahar, further explains why he and his fellow detainees found public nudity especially humiliating: "These were men who would never have appeared naked in front of anyone, except their wives; who had never removed their facial hair, except to clip their moustache or beard; who never used vulgarity nor were likely to have had it used against them. I felt that everything I held sacred was being violated, and they must have felt the same."

PART VI: NEGATIVE

SECTION 1-SAMPLE NEGATIVE CASE

Hello ladies and gentlemen, I would like to begin by thanking my opponent and the judge for being here today. I am here to negate the resolution Resolved: The United States ought to extend to non-citizens accused of terrorism the same constitutional due process protections it grants to citizens. Before presenting my value, criterion and contentions, I will clarify a key term in today's debate.

I would like to counter-define "ought" as "used to express obligation" from Merriam-Webster. This definition is preferable to the affirmative's as it removes the morality aspect which serves only to skew the debate towards the aff.

Value: Utilitarianism

My value in today's debate is utilitarianism, or maximizing the greatest possible amount of good for the greatest possible amount of people. The value of utilitarianism allows for a cost-benefit analysis debate which ensures we don't get bogged down in ludicrous philosophical rantings and instead can measure the impacts of our contentions easily and without needed judge intervention.

Criterion: Minimizing free terrorists

My criterion today is minimizing free terrorists. Given the context of the resolution, I think this criterion is the perfect lens through which to determine if I fulfill my value of utilitarianism. If there are less free terrorists, the risk of terrorist attacks that would reduce the good in many people's lives is lower, and thus utilitarianism is fulfilled.

Contention 1: The conventional justice system does not work for terrorist suspects

If we were to follow the affirmative's suggestion and grant due process rights to non-citizens suspected of terrorism, the immediate result would be an influx of terrorist trials conducted by the conventional, civilian court system. No other system exists in the US that can be argued to fulfill all parts of due process, as witnessed by the heated debate over the creation and usage of military commissions to try terrorist suspects. The conventional system simply cannot handle the specific provisions that must be met to have a safe, secure, efficient trial for terrorist suspects.

Thomas L. **Powers**, PhD in Political Science at the University of Minnesota Duluth, September 22nd 2009, "Due Process for Terrorists?" The Weekly Standard.

<http://www.cbsnews.com/stories/2004/01/08/opinion/main592130.shtml>

Ordinary criminal courts are not designed for trying terrorism suspects. As a practical matter, **they do not routinely provide the kind of security for witnesses, judges, and jurors that is required where terrorist attack and reprisal are a concern.** More important, they **cannot meet the need for secrecy that may arise from the use of sensitive testimony derived from confidential sources.** Normal due process rights, including the right of defendants to confront witnesses against them, must be managed very carefully lest they undermine anti-terrorism efforts. Similarly, **where potential defendants are apprehended on foreign battlefields, some standard Fourth, Fifth, and Sixth Amendment rights (having to do with search warrants, Miranda warnings, the right to have an attorney present while being questioned) and other rules pertaining to evidence (the exclusionary rule, the prohibition of hearsay evidence) are clearly out of place.**

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First, the conventional system requires open trials, meaning sensitive US intelligence information would have to be compromised to gain convictions. Additionally, the conventional system has more stringent evidence requirements, meaning hearsay evidence that is essential to conviction would not be allowed. The civilian court system also has higher burdens of proof than military tribunals.

Michael B. **Mukasey**, former US Attorney General (2007-2009), October 19th, **2009**, "Civilian Courts Are No Place to Try Terrorists." Wall Street Journal.

<http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html?mod=djemEditorialPage>

Moreover, it appears likely that certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen established for use at Guantanamo was designed with such considerations in mind. It provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality. The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

There are also security concerns: these trials are certain to be very high-profile, and terrorist or anti-terrorist elements may attempt an attack. Military commissions are simply better equipped to handle the trial and conviction of terrorist suspects, thus keeping them safely locked away and fulfilling utilitarianism.

Contention 2: The conventional prison system breeds terrorists

Another essential aspect of due process is the right to not be subjected to cruel and unusual punishment. The Guantanamo Bay detention center has long been seen as a symbol of cruel American detention practices, which means terrorists who are convicted in the conventional system would almost certainly end up in conventional American prison systems. This would have devastating ramifications, as many scholars have noted the relationship between prison time and radicalization.

John S. **Pistole**, Assistant Director of Counterterrorism Division, FBI, October 14th, **2003**, "Statement For the Record before the Senate Judiciary Committee, Subcommittee on Terrorism, Technology, and Homeland Security." <http://www.emergencymgt.net/sitebuildercontent/sitebuilderfiles/JohnSPistole.pdf>

terrorists seek to exploit our freedom to exercise religion to their advantage by using radical forms of Islam to recruit operatives. Unfortunately, U.S. correctional institutions are a viable venue for such radicalization and recruitment.[...] Recruitment of inmates within the prison system will continue to be a problem for correctional institutions throughout the country. Inmates are often ostracized, abandoned by, or isolated from their family and friends, leaving them susceptible to recruitment. Membership in the various radical groups offer inmates protection, positions of influence and a network they can correspond with both inside and outside of prison.

Quite simply, when a disaffected individual in prison meets up with a radical yet charismatic terrorist, the former is very likely to turn to terrorism. In this way, terrorists can spread their message and violence even when behind bars themselves. There are over 2 million inmates in prison, many serving short enough sentences that they could be converted to radical Islam then released into the world to commit terrorist acts. While non-citizens accused of terrorism are possibly innocent, the risk run by putting them into conventional prisons where they are able to corrupt other prisoners and turn them to a life of terrorism is simply too large to ignore. The safest way to meet our value of utilitarianism is to ensure that these potential terrorist training microsocieties are not able to form in the first place, thus reducing the risk of free terrorists.

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Contention 3: The conventional system should be changed before due process can be granted

I agree with the affirmative's arguments regarding the moral treatment of individuals and the importance of individual rights. The affirmative's case, however, would plunge terrorist suspects into a system that cannot yet effectively accommodate them. There are too many procedural and legal issues that need to be ironed out first.

Benjamin **Wittes**, fellow and research director at Brookings Institution, and Mark **Gitenstein**, senior fellow at

Brookings Institution, November 15th, 2007, "A Legal Framework for Detaining Terrorists." Brookings Institution

http://www.brookings.edu/~media/Files/Projects/Opportunity08/PB_Terrorism_Wittes.pdf

if the military closes the detention operation at Guantanamo, it will simply have to recreate it somewhere else.

As long as there is no accepted procedure for making detention decisions, the public diplomacy problem that plagues the base will continue to plague any future detention site—which will become, in the public mind,

Guantanamo by another name. Debating Guantanamo in the absence of a larger debate about detention policy is really an exercise in debating the setting for a policy in lieu of debating the policy itself. Simply put, if America puts

the underlying system right, the problems of habeas corpus and Guantanamo will take care of themselves.

Habeas will, one way or another, prove a non-problem—either because it will not be necessary at all or because it will not be intrusive. Guantanamo will either grow less controversial as detention policy improves or it can be

closed and a new facility opened without the taint of its history. By contrast, if America fails to get the system right, neither restoring habeas rights nor closing Guantanamo will compensate for the failure. One step will

merely inject judges into the confusion; the other will require the costly construction of a new facility and movement of detainees.

Non-citizens accused of terrorism may have different constitutional due process protections than citizens, but ones that are still humane. Additionally, as my first contention points out, the conventional system obviously isn't ready for a slew of terrorism trials. One question in particular that needs to be resolved is if the United States continues to capture terrorism suspects, where will they put them once due process protections mandate the closure of indefinite detention centers such as Guantanamo Bay? Once the system has been sufficiently changed, the kinks ironed out, and a vast number of issues resolved, then perhaps due process can be applied to these terrorist suspects. Before that occurs, the best way to minimize the number of free terrorists, thus upholding utilitarianism, is by restricting the due process protections available to non-citizen terrorist suspects. For this reason and the reasons discussed above, I urge a negative ballot in today's debate.

Conventional System Won't Work for Terrorist Suspects pt 1

Usage of the conventional system has many problems

Thomas L. **Powers**, PhD in Political Science at the University of Minnesota Duluth, September 22nd 2009, "Due Process for Terrorists?" The Weekly Standard.

<http://www.cbsnews.com/stories/2004/01/08/opinion/main592130.shtml>

Ordinary criminal courts are not designed for trying terrorism suspects. As a practical matter, **they do not routinely provide the kind of security for witnesses, judges, and jurors that is required where terrorist attack and reprisal are a concern.** More important, they **cannot meet the need for secrecy that may arise from the use of sensitive testimony derived from confidential sources.** Normal due process rights, including the right of defendants to confront witnesses against them, must be managed very carefully lest they undermine anti-terrorism efforts. Similarly, **where potential defendants are apprehended on foreign battlefields, some standard Fourth, Fifth, and Sixth Amendment rights (having to do with search warrants, Miranda warnings, the right to have an attorney present while being questioned) and other rules pertaining to evidence (the exclusionary rule, the prohibition of hearsay evidence) are clearly out of place.**

Using the conventional system breeds security concerns

Michael B. **Mukasey**, former US Attorney General (2007-2009), October 19th, 2009, "Civilian Courts Are No Place to Try Terrorists." Wall Street Journal.

<http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html?mod=djemEditorialPage>

The challenges of a terrorism trial are overwhelming. **To maintain the security of the courthouse and the jail facilities where defendants are housed, deputy U.S. marshals must be recruited from other jurisdictions; jurors must be selected anonymously and escorted to and from the courthouse under armed guard; and judges who preside over such cases often need protection as well.** All such measures burden an already overloaded justice system and interfere with the handling of other cases, both criminal and civil. Moreover, there is **every reason to believe that the places of both trial and confinement for such defendants would become attractive targets for others intent on creating mayhem, whether it be terrorists intent on inflicting casualties on the local population, or lawyers intent on filing waves of lawsuits over issues as diverse as whether those captured in combat must be charged with crimes or released, or the conditions of confinement for all prisoners, whether convicted or not.**

Using the conventional system requires the release of sensitive information

Michael B. **Mukasey**, former US Attorney General (2007-2009), October 19th, 2009, "Civilian Courts Are No Place to Try Terrorists." Wall Street Journal.

<http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html?mod=djemEditorialPage>

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by conventional criminals. **Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists, both those in custody and those at large.** [...] It is not simply the disclosure of information under discovery rules that can be useful to terrorists. The **testimony in a public trial, particularly under the probing of appropriately diligent defense counsel, can elicit evidence about means and methods of evidence collection that have nothing to do with the underlying issues in the case, but which can be used to press government witnesses to either disclose information they would prefer to keep confidential or make it appear that they are concealing facts.** The alternative is to lengthen criminal trials beyond what is tolerable by vetting topics in closed sessions before they can be presented in open ones.

Conventional System Won't Work for Terrorist Suspects pt 2

Using the conventional system requires the release of sensitive information

Madeline **Morris et. al**, Professor of Law at Duke University, June 30th, 2009, "After Guantanamo: War, Crime, and Detention." Harvard Law and Policy Review. http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2630&context=faculty_scholarship&sei

A second problem frequently affecting terrorism prosecutions concerns classified information. The presentation of certain evidence at trial (by the prosecution or the defense) may compromise sensitive intelligence—or reveal the methods or sources used for gaining intelligence—with resultant damage to national security. Some commentators dismiss this problem, noting that many terrorism cases have been successfully prosecuted in federal courts. But the relevant question is not whether some terrorism cases can be prosecuted successfully in federal courts—clearly, some can—but, rather, whether some cannot. There is no publicly available list of the terrorism cases that were not prosecuted because of the national-security costs that would have been associated with disclosing the necessary evidence in those trials.

Military Commissions can handle classified information better than civilian courts

Michael B. **Mukasey**, former US Attorney General (2007-2009), October 19th, 2009, "Civilian Courts Are No Place to Try Terrorists." Wall Street Journal.

<http://online.wsj.com/article/SB10001424052748704107204574475300052267212.html?mod=djemEditorialPage>
Moreover, it appears likely that certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen established for use at Guantanamo was designed with such considerations in mind. It provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality. The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

Conventional system limits usable evidence

Madeline **Morris et. al**, Professor of Law at Duke University, June 30th, 2009, "After Guantanamo: War, Crime, and Detention." Harvard Law and Policy Review. http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2630&context=faculty_scholarship&sei

First, evidence that may be a highly reliable indicator of dangerousness may also be, in some instances, inadmissible in a criminal trial. Take, for example, corroborated hearsay. Imagine that three informants report hearsay statements indicating that the suspect is plotting a biological weapons attack. Although the three informants have not communicated with each other, the three statements contain identical details that could not be coincidental. There is also physical evidence that corroborates the hearsay statements. All of the hearsay statements, no matter how reliably they may indicate dangerousness, are inadmissible in a criminal trial, under the relevant rules of evidence. And the physical evidence, uninformed by the hearsay testimony, is meaningless (or, if not meaningless, then certainly not proof beyond a reasonable doubt). In this situation, prosecution is not a viable option—even though there may be sound basis to believe that the person is too dangerous to release.

Conventional system's standard of proof is too high to apply to terrorist safely

Madeline **Morris et. al**, Professor of Law at Duke University, June 30th, 2009, "After Guantanamo: War, Crime, and Detention." Harvard Law and Policy Review. http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2630&context=faculty_scholarship&sei

The third problem (and the one most unpleasant to articulate) is the standard of proof. Criminal conviction requires proof beyond a reasonable doubt. That standard should not be eroded. Nor, however, should it be applied to the prevention of high-magnitude terrorism. Is it really smart to release an individual shown by "clear and convincing evidence" (the standard of proof one step below "reasonable doubt", often used in civil cases) to

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have attempted a nuclear attack or a release of smallpox virus? If the answer is no, then criminal law is not the right tool for preventing catastrophic terrorism.

Conventional System Won't Work for Terrorist Suspects pt 3

Conventional system places hurdles not present in military commissions

Charles **Stimson**, Senior Legal Fellow at the Heritage Foundation, April 5th, **2011**, "Testimony before Subcommittee on Crime, Terrorism and Homeland Security," United States House of Representatives. <http://www.heritage.org/research/testimony/2011/04/justice-for-america-using-military-commissions-to-try-the-911-conspirators>

for practical reasons, certain cases face hurdles to trial in civilian courts and will need to be brought before military commissions. In federal court, criminal defendants receive the full panoply of procedural and substantive rights guaranteed by the Constitution. But those guarantees were never intended to extend to enemy belligerents, and indeed, they would render effective prosecution in many cases impossible. U.S. soldiers on the battlefield, whether in the war on terror or a more conventional armed conflict, do not Mirandize enemy fighters, do not apply to magistrate judges for search and arrest warrants, and do not offer captured enemy fighters the customary opportunity to call an attorney upon being detained. The Constitution does not, of course, require that soldiers do any of these things. Nor does it require that we extend to captured belligerents the same procedural protections that apply to criminal defendants. Those requirements, however, would apply in a federal courtroom, and could derail the prosecution.

Jurors and judges would require lifetime protection, logistically difficult

Ruth **Wedgwood**, Professor of Law at Yale Law School, December 3rd, **2001**, "The Case for Military Tribunals" Wall Street Journal. <http://www.law.yale.edu/news/3297.htm>

just consider the logistics. It is hard to imagine assigning three carloads of federal marshals, rotated every two weeks, to protect each juror for the rest of his life. An al Qaeda member trained in surveillance can easily follow jurors home, even when their names are kept anonymous. Perhaps it is only coincidence that the World Trade Center towers toppled the day before al Qaeda defendants were due to be sentenced for the earlier bombings of East Africa embassies--in a federal courthouse in lower Manhattan six blocks away. But certainly before Sept. 11 no one imagined the gargantuan appetite for violence and revenge that bin Laden has since exhibited. Endangering America's cities with a repeat performance is a foolish act. If there are a sizeable number of al Qaeda captures, the sheer volume will also be disabling. At a rate of (at most) 12 defendants per trial, trying 700 al Qaeda members would take upwards of 50 judges, sequestered in numerous courthouses around the country.

Evidence and classified information concerns exist—even CIPA doesn't solve

Ruth **Wedgwood**, Professor of Law at Yale Law School, December 3rd, **2001**, "The Case for Military Tribunals" Wall Street Journal. <http://www.law.yale.edu/news/3297.htm>

In federal court, as well, there are severe limitations on what evidence can be heard by a jury. Hearsay statements of probative value, admissible in military commissions, European criminal courts, and international courts, cannot be considered in a trial by jury. Historically, Anglo-American juries were thought incapable of weighing out-of-court statements, and the Supreme Court attached many of these jury rules to the Constitution. So bin Laden's telephone call to his mother, telling her that "something big" was imminent, could not be entered into evidence if the source of information was his mother's best friend. In a terrorist trial, there are few eyewitnesses willing to testify, because conspiracy cells are compartmentalized, and witnesses fear revenge. There is also the problem of publishing information to the world, and to al Qaeda, through an open trial record. As Churchill said, your enemy shouldn't know how you have penetrated his operations. The 1980 Classified Information Procedures Act helped to handle classified secrets at trial, but doesn't permit closing the trial or the protection of equally sensitive unclassified operational information.

Conventional Prisons Breed Terrorists pt 1

US Correctional Institutions allow terrorist recruitment

John S. **Pistole**, Assistant Director of Counterterrorism Division, FBI, October 14th, **2003**, "Statement For the Record before the Senate Judiciary Committee, Subcommittee on Terrorism, Technology, and Homeland Security." <http://www.emergencymgt.net/sitebuildercontent/sitebuilderfiles/JohnSPistole.pdf>
terrorists seek to exploit our freedom to exercise religion to their advantage by using radical forms of Islam to recruit operatives. Unfortunately, **U.S. correctional institutions are a viable venue for such radicalization and recruitment.** [...] Recruitment of inmates within the prison system will continue to be a problem for correctional institutions throughout the country. **Inmates are often ostracized, abandoned by, or isolated from their family and friends, leaving them susceptible to recruitment. Membership in the various radical groups offer inmates protection, positions of influence and a network they can correspond with both inside and outside of prison.**

Radical Islamic movements convert disaffected prisoners

Mark **Silverberg**, foreign policy analyst with the Ariel Center for Policy Research, May **2006**, "The Silent War: Wahhabism and the American Penal System." The New Media Journal
<http://www.islamdaily.org/en/wahabism/4365.the-silent-war-wahhabism-and-the-american-penal-sy.htm>
The **conversion program is funded with Saudi money through the National Islamic Prison Foundation, an organization that underwrites "prison outreach" but whose real goal is the conversion of large numbers of inmates** (primarily African-American) not only to Wahhabism, but **to its radical Islamist agenda....and the effort is both successful** and, for the most part, hidden from public view. Islam is the fastest growing religion among young, incarcerated African-Americans. Some figures suggest that one out of three African-Americans in federal prison are Muslim and most converted during their imprisonment. With an estimated 250,000 Muslim inmates in the nation's prisons (making up 10% to 17% of the prison and jail population), there are reasons for concern especially since **Foundation officials claim an average of 135,000 additional conversions per year.** When these inmates are released from prison with the customary \$10, a suit of clothes and a one-way bus or train ticket, they know any mosque or masjid (Islamic Center) will shelter and feed them and help them find a job. **Prison authorities believe that these converted inmates could serve as terrorists once they are released, murdering their own countrymen in a kind of "payback" for perceived injustices done to them by "white America."**

Terrorist recruitment happens because of radical prisoners

Mark S. **Hamm**, PhD at Indiana State University in Criminology and Criminal Justice, December **2007**, "Terrorist Recruitment in American Correctional Institutions: An Exploratory Study of Non-Traditional Faith Groups Final Report." Commissioned by the US Department of Justice <http://www.ncjrs.gov/pdffiles1/nij/grants/220957.pdf>
The head of terrorism intelligence recognized that that **many Florida prisoners are vulnerable to radicalization and terrorist recruitment.** Prisoners themselves are keenly aware of this. The official said: "Radicalized prisoners are very aware that people are interested in radicalized prisoners. They are very careful who they talk to in prison." The official also noted **that most inmates are radicalized by other radical inmates, and not by outside influences.** He further recognized that the greatest threat emanates from fringe elements of Prison Islam, including Muslim inmates who "look like white supremacists."

Conventional Prisons Breed Terrorists pt 2

Terrorist recruitment in prisons is carried out by terrorists in and out of prison

Mark S. **Hamm**, PhD at Indiana State University, December **2007**, "Terrorist Recruitment in American Correctional Institutions: An Exploratory Study of Non-Traditional Faith Groups Final Report." Commissioned by the US Department of Justice <http://www.ncjrs.gov/pdffiles1/nij/grants/220957.pdf>

First, **there are a significant number of terrorists who are already in custody**. These prisoners include domestic terrorists (former members of the Order, etc.) and international terrorists (most importantly, members of al-Qaeda). **They are incarcerated at all jurisdictional levels**. For example, Richard Reid was first locked up in a county jail, then sent to a state prison, and finally to a federal institution. Kevin James went from a state prison to a county jail and then to federal lock up. Such **high-profile inmates may try to either carry on a preexisting terrorist plot, or radicalize other prisoners for the cause**. Second, **radicalization occurs locally**. While inmates may be inspired by foreign terrorist groups like al-Qaeda, these groups are not directly involved in the radicalization process. Third, **local efforts to radicalize prisoners have been aided and abetted by individuals who come into prisons to provide services directly to inmates**. Some of these individuals have been highly mobile, visiting prisoners in more than one state. Some have distributed extremist literature to inmates.

Congress recognizes the dangers of prisoner radicalization

Eric **Vogt**, Instructor specializing in staff training on anti-terrorism at U.S. Medical Center for Federal Prisons in Springfield, formerly of US Army Intelligence, May 29th, **2008**, "Terrorists in Prison: The Challenge Facing Corrections." American Board for Certification in Homeland Security
http://www.icpa.ca/tools/download/622/Terrorists_in_Prison.pdf

Inmate radicalization in correctional facilities was identified as a major concern of the U.S. Congress after September 11, 2001. John S. Pistole, the assistant director of the Counterterrorism Division of the Federal Bureau of Investigation, gave this testimony before the Senate Judiciary Committee, Subcommittee on Terrorism, Technology, and Homeland Security on October 14, 2003: "**In my opinion, al-Qaeda remains the greatest threat to the United States. . . . These terrorists seek to exploit our freedom to exercise religion to their advantage by using radical forms of Islam to recruit operatives. Unfortunately, U.S. correctional institutions are a viable venue for such radicalization and recruitment. . . . Recruitment of inmates within the prison system will continue to be a problem for correctional institutions throughout the country.**"

Empirics show that terrorist cells can be led from prison

Eric **Vogt**, Instructor specializing in staff training on anti-terrorism at U.S. Medical Center for Federal Prisons in Springfield, formerly of US Army Intelligence, May 29th, **2008**, "Terrorists in Prison: The Challenge Facing Corrections." American Board for Certification in Homeland Security
http://www.icpa.ca/tools/download/622/Terrorists_in_Prison.pdf

In the 2004 Office of the Inspector General's *Report to Congress*, 16 recommendations were made to assist the Federal Bureau of Prisons in improving its process for selecting, screening, and supervising Muslim religious services providers. **Donald Van Duyn**, the deputy assistant director of the Counterterrorism Division of the Federal Bureau of Investigation, **reported on the status of the corrective action to the Senate Committee on Homeland Security and Governmental Affairs and Related Agencies on September 19, 2006:** "FBI and the Bureau of Prisons analysis shows that **radicalization and recruitment in U.S. prisons is an ongoing concern. Prison radicalization primarily occurs through anti-U.S. sermons provided by contract, volunteer, or staff imams, radicalized inmates who gain religious influence, and extremist media.**" The deputy assistant director then described the case of Jam'iyat Ul-Islam IsSaheeh (JIS). **Levar Washington and other recruited members of JIS were allegedly involved in several gas station robberies in Los Angeles, California. Investigation revealed that the putative purpose of this string of robberies was to finance terrorist activities in California against U.S. military and Israeli targets. The founder of JIS, Kevin Lamar James, is an inmate in the California correctional system. He allegedly recruited Washington while at New Folsom prison and, upon release, Washington reportedly recruited the other cell members.**

The conventional system needs changing pt 1

There are underlying public policy problems plaguing detention policy

Benjamin **Wittes**, fellow and research director at Brookings Institution, and Mark **Gitenstein**, senior fellow at Brookings Institution, November 15th, **2007**, “A Legal Framework for Detaining Terrorists.” Brookings Institution http://www.brookings.edu/~media/Files/Projects/Opportunity08/PB_Terrorism_Wittes.pdf
if the military closes the detention operation at Guantanamo, it will simply have to recreate it somewhere else. As long as there is no accepted procedure for making detention decisions, the public diplomacy problem that plagues the base will continue to plague any future detention site—which will become, in the public mind, Guantanamo by another name. Debating Guantanamo in the absence of a larger debate about detention policy is really an exercise in debating the setting for a policy in lieu of debating the policy itself. Simply put, **if America puts the underlying system right, the problems of habeas corpus and Guantanamo will take care of themselves.** Habeas will, one way or another, prove a non-problem—either because it will not be necessary at all or because it will not be intrusive. **Guantanamo will either grow less controversial as detention policy improves or it can be closed and a new facility opened without the taint of its history. By contrast, if America fails to get the system right, neither restoring habeas rights nor closing Guantanamo will compensate for the failure.** One step will merely inject judges into the confusion; the other will require the costly construction of a new facility and movement of detainees.

The best approach is to fix the law before moving forward

Benjamin **Wittes**, fellow and research director at Brookings Institution, and Mark **Gitenstein**, senior fellow at Brookings Institution, November 15th, **2007**, “A Legal Framework for Detaining Terrorists.” Brookings Institution http://www.brookings.edu/~media/Files/Projects/Opportunity08/PB_Terrorism_Wittes.pdf
The right approach is to create the appropriate system first and then figure out what role habeas corpus and Guantanamo should play within it. Developing rules for detaining suspected enemies engaged in unconventional warfare against the United States represents the fundamental challenge facing American legal policy in the war on terrorism today. While problems such as interrogation techniques, the treatment of detainees, the CIA’s program of secret prisons, and extraordinary rendition are vital to address as well, they are ancillary issues, which **policy-makers cannot resolve without first taking on the core questions: who can be detained, for how long, under what rules, what are the detainee’s rights under these rules, and what role should the courts play in overseeing detentions?**

Future terrorist suspects need an avenue for detention and prosecution

Mark **Kukis**, Time Journalist, November 11th, **2008**, “How to Close Guantanamo: A Legal Minefield.” Time Magazine. <http://www.time.com/time/nation/article/0,8599,1858205,00.html>
Then there’s the question of what to do with future suspected terrorists who are caught in an indefinite war on terrorism if there is no more Guantánamo. Alleged terrorist operatives will continue to fall into the hands of the FBI, CIA and military in the years ahead. Obama may consider working to create so-called national-security courts, which would essentially be a hybrid tribunal system blending military and civilian criminal law. **Those who support the creation of national-security courts say that only a new, carefully constructed system can effectively deal with issues like classified evidence and other matters that sometimes snarl proceedings in regular criminal and military courts.**

The conventional system needs changing pt 2

Terrorist detention and trial requires special rules, currently lacking

Benjamin **Wittes**, fellow and research director at Brookings Institution, and Mark **Gitenstein**, senior fellow at Brookings Institution, November 15th, **2007**, “A Legal Framework for Detaining Terrorists.” Brookings Institution http://www.brookings.edu/~media/Files/Projects/Opportunity08/PB_Terrorism_Wittes.pdf

The paradox is that, precisely because terrorists flout the rules of warfare and make themselves harder to distinguish from civilians when captured, they necessitate a level of due process that conventional forces, which make no secret of their status as belligerents, do not require. The question is what sort of process might identify these unlawful combatants accurately and with public credibility. The Geneva Conventions require only that, in cases of doubt, all individuals receive review by a “competent tribunal”— historically, cursory field panels that provide few procedural protections. But such panels are a bad fit with the war on terrorism.

Benjamin **Wittes**, fellow and research director at Brookings Institution, and Mark **Gitenstein**, senior fellow at Brookings Institution, November 15th, **2007**, “A Legal Framework for Detaining Terrorists.” Brookings Institution http://www.brookings.edu/~media/Files/Projects/Opportunity08/PB_Terrorism_Wittes.pdf

In many of these cases, the factual issues are too complicated, the lines between civilian and combatant too hazy, the duration of the conflict too uncertain, and the consequences to the liberty of individuals too vast. Congress therefore needs to create new statutory procedures for handling “unlawful enemy combatants” of the Guantanamo type. The procedures must not be subject to the whim of the executive. Instead, they should be blessed by all three branches of government, reflecting the unified will of the American political system. These processes need not include all the protections of a criminal trial. But, they need to be considerably more robust than the process applied to prisoners in a conventional military conflict or the process applied to detainees today at Guantanamo.

Empirically, federal court prosecution of terrorist suspects is difficult

Mark **Kukis**, Time Journalist, November 11th, **2008**, “How to Close Guantanamo: A Legal Minefield.” Time Magazine. <http://www.time.com/time/nation/article/0,8599,1858205,00.html>

Take for example the case of Khalid Sheikh Mohammed, the most senior al-Qaeda operative in U.S. custody. At present, his case and many other prominent ones appear essentially stalled at the specially formed military commissions, which the Obama campaign has pledged to halt. But prosecuting Mohammed and other cases like his in federal court may prove tricky. At least some of the evidence against Mohammed looks to have been gathered during harsh interrogations, which may make it inadmissible in court. His arrest and detention had none of the necessary steps provided under U.S. civilian law that help safeguard the rights of suspects — and sometimes allow for loopholes for some to minimize or evade prosecution. Many of the same legal obstacles would arise in any attempt to court-martial Mohammed, because regular military courts have comparable rules about evidence and legal procedure. There are, at bottom, no good options for trying Mohammed and the roughly 14 others the government appears intent on prosecuting, because the Bush Administration has held them for so many years by Executive Orders in contravention of regular U.S. criminal and military law.

The conventional system needs changing pt 3

Which constitutional protections apply to terrorist trials needs to be determined

Michael John **Garcia et. al**, Legislative Attorney, former Assistant Secretary for Immigration and Customs Enforcement, March 28th, **2011**. "Closing the Guantanamo Detention Center: Legal Issues." Congressional Research Service <http://www.fas.org/sgp/crs/natsec/R40139.pdf>

On the other hand, it is clear that if Guantanamo detainees are subject to criminal prosecution in United States, the constitutional provisions related to such proceedings would apply. **The application of these constitutional requirements might nevertheless differ depending upon the forum in which charges are brought.** The Fifth Amendment's requirement that no person be held to answer for a capital or infamous crime unless on a presentment or indictment of a grand jury, and the Sixth Amendment's requirements concerning trial by jury, have been found to be inapplicable to trials by military commissions or courts-martial. **The application of due process protections in military court proceedings may also differ from civilian court proceedings, in part because the Constitution "contemplates that Congress has 'plenary control over rights, duties, and responsibilities in the framework of the Military Establishment, including regulations, procedures, and remedies related to military discipline.'"** In the past, courts have been more accepting of security measures taken against "enemy aliens" than U.S. citizens, particularly as they relate to authority to detain or restrict movement on grounds of wartime security. **It is possible that the rights owed to enemy belligerents in criminal prosecutions would be interpreted more narrowly by a reviewing court than those owed to defendants in other, more routine cases, particularly when the constitutional right at issue is subject to a balancing test.**

Detention center closure will raise complex legal issues

Michael John **Garcia et. al**, Legislative Attorney, former Assistant Secretary for Immigration and Customs Enforcement, March 28th, **2011**. "Closing the Guantanamo Detention Center: Legal Issues." Congressional Research Service <http://www.fas.org/sgp/crs/natsec/R40139.pdf>

In any event, **the closure of the Guantanamo detention facility may raise complex legal issues, particularly if detainees are transferred to the United States. The nature and scope of constitutional protections owed to detainees within the United States may be different from the protections owed to those held elsewhere.** The transfer of detainees into the country may also have immigration consequences. Criminal charges could also be brought against detainees in one of several forums—that is, federal trial courts, the courts-martial system, or military commissions. **The procedural protections afforded to the accused in each of these forums may differ, along with the types of offenses for which persons may be charged. This may affect the ability of U.S. authorities to pursue criminal charges against some detainees.**

The conventional system needs changing pt 4

Which constitutional protections apply to terrorist trials needs to be determined

Michael John **Garcia et. al**, Legislative Attorney, former Assistant Secretary for Immigration and Customs Enforcement, March 28th, **2011**. "Closing the Guantanamo Detention Center: Legal Issues." Congressional Research Service <http://www.fas.org/sgp/crs/natsec/R40139.pdf>

Whether the military commissions established to try detainees for war crimes fulfill constitutional requirements concerning a defendant's right to a fair trial is likely to become a matter of debate, if not litigation. There is considerable prosecutorial discretion within the executive branch regarding which forum to utilize, but legislative enactments may potentially limit the exercise of such discretion, including by requiring detainees to be charged in a particular forum. **The issues raised by the proposed closure of the Guantanamo detention facility have broad implications. Executive policies, legislative enactments, and judicial rulings concerning the rights and privileges owed to enemy belligerents may have long-term consequences for U.S. detention policy, both in the conflict with Al Qaeda and the Taliban and in future armed conflicts.**

Current laws prevent Guantanamo inmates from being tried in civilian courts

Johnathan **Masters**, Masters in Social Theory from New School University, July 11th, **2011**, "Closing Guantanamo?" Council on Foreign Relations.

<http://www.cfr.org/terrorism-and-the-law/closing-guantanamo/p18525>

Obama's decision to pursue detainee trials in U.S. federal courts sparked public controversy and political backlash, particularly from conservative members of Congress. As a result, **Congress passed the Ike Skelton Defense Authorization Act for FY2011 (DAA 2011), which prohibits using U.S. military funds for the transfer or release of Guantanamo prisoners into the United States. This law effectively prevents the Obama administration from employing Article III courts in detainee trials, and ensures that, for at least FY 2011, military tribunals will be the only viable alternative.** According to the February 2011 CRS report, **the act constitutes the most significant impediment to the executive branch's promise to close the detention center at Guantanamo.** The most notable outcome of the Skelton Act was the April 2011 announcement by Attorney General Eric Holder that Khalid Sheikh Mohammad, the September 11 mastermind, would be tried by military commission at Guantanamo Bay--a marked shift from prior efforts to try him in a New York City courtroom. However, Holder remarked that he continues to believe Article III courts represent the best alternative for such trials.

Military Commissions are an Acceptable Form of Justice pt 1

Military commissions are historically fair

Detlev F. **Vagts**, Bemis Professor of Law, emeritus, Harvard Law School, **2007**, "Military Commissions: The Forgotten Reconstruction Chapter." American University International Law Review

<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1020&context=auilr&sei-redir=1>

As to their necessity, **one concludes that commissions are needed where the civilian system is not in a position to press criminal cases. This was the conclusion of Congress and most commanding generals.** Commissions would be necessary in another occupation experience where local courts were not functioning, though it might be wise to use civilian judges. **In general, commissions can perform adequately and swiftly.** The experiment of 2001 with reviving commissions ran into difficulties because it took a long time to adapt established courts-martial practices to the supposed needs of the new assignment. That adaptation was hotly contested, since it involved the first step backward in the history of military justice. The twenty-first century commission system thus negated a major advantage of military courts—that they can convene swiftly and at the scene of the crime. **The cases examined seem to have been careful and fair, with convictions not automatic.**

Military commissions offer protection to detainees

Charles **Stimson**, Senior Legal Fellow at the Heritage Foundation, April 5th, **2011**, "Testimony before Subcommittee on Crime, Terrorism and Homeland Security," United States House of Representatives.

<http://www.heritage.org/research/testimony/2011/04/justice-for-america-using-military-commissions-to-try-the-911-conspirators>

military commissions provide robust protections to detainees. Indeed, compare the procedural protections and rules contained in the Military Commissions Act of 2009 to standard U.S. courts-martial and other international tribunals—as I have—and you will see **that today's commissions offer unlawful combatants more robust due process and protections than any international tribunal ever created.**

Detention and military commission is the historical way

Ruth **Wedgwood**, Professor of Law at Yale Law School, December 3rd, **2001**, "The Case for Military Tribunals" Wall Street Journal. <http://www.law.yale.edu/news/3297.htm>

The detention of combatants is a traditional prerogative of war. We have all seen movies about captured soldiers in World War II. After surrender or capture, a soldier can be parked for the rest of the war, in humane conditions, to prevent him from returning to the fight. **His detention does not depend on being charged with a crime.** Though most al Qaeda members do not rise even to the level of POWs—they have trampled on the qualifying rules of wearing distinctive insignia and observing the laws of war--**they can be detained by the same authority for the duration of the conflict. Military courts are the traditional venue for enforcing violations of the law of war. The Sept. 11 murder of 4,000 civilians was an act of war, as recognized by the U.N. Security Council** in two resolutions endorsing America's right to use force in self-defense. Osama bin Laden and his airborne henchmen disregarded two fundamental principles of morality and law in war--never deliberately attack civilians, and never seek disproportionate damage to civilians in pursuit of another objective. **The choice to carry out the attacks during the morning rush hour reveals this to be a war crime of historic magnitude.** Why not try al Qaeda members in Article III federal courts, with a civilian judge and a jury? **Federal judges have never been involved in the detention of POWs or unprivileged combatants.** Only in 1996 did federal courts gain limited statutory jurisdiction to hear war crimes matters, and **no federal court has ever heard such a case.**

Military Commissions are an Acceptable Form of Justice pt 2

The President clearly holds the power to convene military commissions

Ruth **Wedgwood**, Professor of Law at Yale Law School, December 3rd, **2001**, "The Case for Military Tribunals" Wall Street Journal. <http://www.law.yale.edu/news/3297.htm>

Congress will want to consult on the nature of the military tribunals established by President Bush. **Congress's input will be useful to the administration in crafting rules of procedure and evidence, as well as in thinking about added safeguards for alleged terrorists discovered within the U.S.** Civilian judges can serve on military tribunals (civilians served at Nuremberg), and few hearings may be closed, except for sensitive portions. Habeas corpus review remains available for aliens arrested in the U.S. **But it is also plain that Congress long ago agreed to the president's power to convene military commissions** (under U.S. Code, Title 10, Section 821). In addition, **the president has inherent constitutional power as commander-in-chief to convene such tribunals, an argument acknowledged by Chief Justice Harlan Fiske Stone in a 1942 opinion.** (Stone, writing for a unanimous Supreme Court, declined to set aside the military trial and execution of German saboteurs who had entered the U.S. to destroy war plants.) **The president is also authorized by statute to write rules of procedure and proof for military commissions, and to decide whether or not it is "practicable" to adopt the ordinary rules of common law and evidence.**

Tribunals make the prosecution process much easier, more streamlined

Kendall **Coffey**, former U.S. attorney and current Miami lawyer, May 26th, **2003**. "The Case For Military Tribunals." Wall Street Journal http://kendallcoffey.com/pdfs/publications/Case_for_Military_Tribunals.pdf
In a military tribunal, the executive branch could more flexibly address the security issues by, if necessary, limiting disclosure of the most sensitive evidence to the tribunal members themselves. Although *Miranda* is not an issue with Moussaoui, **aggressive questioning by military and intelligence operatives could be treated more suitably in tribunals without the potential reconfiguration of Fifth Amendment rights that could result if terrorism is lodged in judicial proceedings.** **Other security issues, ranging from the personal safety of judges and jurors to utilization of electronically intercepted communications, are also much more manageable with tribunals.** Judge Brinkema's ruling on the Ramzi testimony could well go to the Supreme Court. But **it is ultimately inappropriate for our civil justice system to be forced to choose between protecting the Constitution and protecting citizens from foreign enemies.** **Tribunals may turn out to be the ally of civil liberties, insulating the constitutional traditions in our civilian courts from the pressures of foreign terrorism.**

Battlefield arrests do not require the usage of federal criminal rules

Victoria **Toensing**, former deputy assistant attorney general (criminal division) and chief counsel for the Senate Select Committee on Intelligence, February 1st, **2010**, "The Case for Military Tribunals." The Weekly Standard <http://www.weeklystandard.com/blogs/where-try-ksm>

In its attempt to sell us on civilian trials for terrorists, **the administration claims we need to demonstrate that "we have the best criminal justice system in the world."** **For just that reason illegal enemy combatants should not be tried under its rules. Battleground conditions do not translate to federal criminal rules.** There are no evidence bags stored in the foxhole to preserve the chain of custody. **Any effort by a trial judge to force the terrorist's foot into our constitutionally honed Cinderella shoe threatens valued protections that have been enlarged over two centuries of Supreme Court review,** most since World War II. **At the same time, a policy that includes the possibility of a civilian trial for any terrorist controls our treatment of all terrorists, thereby crippling our ability to obtain needed intelligence.** Assume that for KSM et al there are no *Miranda* issues. That is, the government has sufficient evidence to prosecute and convict without using any statements made sans warnings about the rights to a lawyer and to remain silent. **But what about combatants captured in the future? What if Osama Bin Laden is found alive? Does he have to be given Miranda warnings just in case he could be tried in a federal court?**